

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

31 WRIT PETITION NO.1466 OF 2023

NILESH RANJIT BHOITE AND OTHERS
VERSUS
THE JOINT CHARITY COMMISSIONER AND OTHERS

Mr. V.D. Hon i/by Mr. Abasaheb D. Shinde, Advocate for the
Petitioner.

Mr. S.S. Dande, AGP for the Respondent-State.

Mr. A.B. Kale h/f. Mr. N.E. Deshmukh, Advocate for Respondent
No.8

CORAM : SHARMILA U. DESHMUKH, J.

DATED : FEBRUARY 09, 2023.

PER COURT :

1. Heard.

2. The petition challenges the order dated 27th of January 2023 passed below Exh. 193 and 197 in Application No.11 of 2020, whereby the petitioner's application for production of pendrive and for impleading the District Deputy Registrar, Co-operative Society in the proceedings instituted under Section 41(e) of the Maharashtra Public Trusts Act, 1950 came to be rejected.

3. Heard learned Senior Counsel Mr. Hon for the Petitioners and Mr. Kale, learned counsel appearing for Respondent No.8.

4. Learned Senior Counsel submits that the trust is an educational society and was registered under the provisions of Maharashtra Public Trusts Act and inadvertently instead of registering the trust under the provisions of the Societies Registration Act, was registered under the provisions of the Maharashtra Co-operative Societies Act. Taking advantage of the registration under the Maharashtra Co-operative Societies Act, certain group of persons started to claim right and interest in the said trust by declaring themselves as elected directors of the co-operative society. He would further submit that that in fact the petitioners are the elected trustees of the trust, and has therefore, filed the application under Section 41 seeking injunction against the directors and members claiming to be the elected directors and members of the cooperative society.

5. The application which has been filed seeks an order of injunction against the respondents who claim to be the directors and members of the cooperative society restraining them from entering into the premises of the public trust and from using the properties the trust for the purpose of election until the issue as to the trust is a co-operative society or trust under the Maharashtra Public Trusts Act, 1950 is decided by this Court. The application which has been filed below Exh.193 seeks permission to produce on record a pendrive claiming to be phone call recording with the transcription of conversation therein between one Tejas More and Vijay Patil, who is the Respondent No.8 herein. Admittedly, Tejas

More is not a party to the proceedings and the perusal of the impugned order show that the Joint Charity Commissioner has gone through the transcription of the conversation and observed that there is no mention of the name of the trust. Learned Senior Counsel for the petitioner submits that the conversation relates to the manner in which the conspiracy has been hatched by the respondents in collusion with one lawyer and as such is necessary for the decision of the matter.

6. In my opinion, the application for injunction is required to be decided on the facts of the case and based on the statutory provisions as to whether the trust is registered under the provisions of the Maharashtra Public Trusts Act and as such the petitioners are the trustees or is a cooperative society and as such the respondents claiming to be the directors and members of the cooperative society are entitled to use the premises/property of the trust. In such facts of the matter the alleged conspiracy if any, which is sought to be proved through the pendrive, in my opinion, is not necessary for the purpose of deciding the application under Section 41 (e) of the Trusts Act.

7. As regards the application below Exh.197 seeking to implead the District Deputy Registrar, Co-operative Society as a party to the proceedings, the impleadment has been sought on the basis that the District Deputy Registrar is in custody of certain documents and as such is the appropriate authority, who can

produce such documents in the proceedings. For the purpose of production of the documents, it is not necessary that the District Deputy Registrar, Co-operative Society be impleaded as the party. The parties are free to seek a witness summon for summoning the District Deputy Registrar, Cooperative Society for production of the documents which are in the custody of the District Deputy Registrar for which the appropriate application can be moved at the appropriate time.

8. For the reasons above, there is no infirmity in the impugned orders. Writ Petition stands dismissed.

(SHARMILA U. DESHMUKH, J.)