

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10774 OF 2021

Tushar Vishwas Joshi and others .. Petitioners

Versus

Pra Vasant Yeshwant Ghaskadbi
and Mandakini Vasant Ghaskadbi
Shaikshanik Sanstha and others .. Respondents

Shri Ajit M. Gholap, Advocate for the Petitioners.

Shri Gujrathi Yatish G., Advocate for the Respondent Nos. 1, 2,
5, 6 and 8 to 10.

Shri Mohit S. Shah, Advocate for the Respondent No. 7.

Mrs. Charuta S. Deshmukh, Advocate for the Respondent No. 11.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 20TH JANUARY, 2023.**

FINAL ORDER :

. Heard.

2. The challenge in the present Petition is to the order passed on 09th August, 2021 in Spl. C. S. No. 103 of 2013, whereby the Trial Court permitted the respondent No. 11, one of the trustees of the respondent No. 1/trust to be impleaded as a party in the suit, filed by the petitioner herein seeking specific performance of agreement for sale dated 22.01.2010 apparently after obtaining sanction of the Charity Commissioner U/Sec. 36 of the Maharashtra Public Trust Act. The necessity to file the suit for specific performance occurred, as per the learned counsel for the petitioner, as some of the trustees objected to the same. The respondent No. 11 who was one of such trustees filed an application for being impleaded as a party, claiming to be an

interested party.

3. A reply affidavit came to be filed by the respondent No. 11 stating that due to his ill health and old age he is no longer interested in continuing with the Spl. C. S. No. 103 of 2013 and as such the petition can be disposed of considering said fact. It is also stated in the affidavit in reply that he has given resignation of the trusteeship of the respondent No. 1/trust.

4. Learned counsel appearing for respondent Nos. 1, 2, 5, 6 and 8 to 10 has disputed this position and has filed affidavit in reply stating that there is no provision under the Trust Act whereby resignation can be given and the respondent No. 11 was and is founder member/trustee of the trust and he cannot withdraw from the trust.

5. The issue which is required to be considered by this Court is the validity of the impugned order dated 09th August, 2021 permitting the respondent No. 11 to be impleaded as a party in Spl.C.S. No. 103 of 2013. Considering the fact that the respondent No. 11 himself has declined to participate in the proceedings nothing further survives for consideration in the writ petition, which was limited only to examine the validity of the impugned order dated 09th August, 2021.

6. The issue as to whether the respondent No. 11 being a trustee continues to remain a trustee or is entitled to resign from the trusteeship is not subject matter of this proceeding and can be agitated in the appropriate proceeding and in an appropriate forum. The submission of the learned counsel for the

respondents that the respondent No. 11 cannot be permitted to resile from the proceeding at this juncture can not be sustained for the reason that in the Spl.C.S. No. 103 of 2021, it was the respondent No. 11 himself, who had filed an application for impleadment and now he does not desire to further participate in the proceedings. In my opinion and considering the fact that trustees who objected to the sale of the suit property are already defendants to the proceedings, there may not be any prejudice caused to the trust, if the respondent No. 11 resiles from the proceedings.

7. Considering the above, the cause for consideration of the order dated 09th August, 2021 does not survive in view of the affidavit in reply filed by the respondent No. 11 and is quashed and set aside. All contentions of the parties before the Trial Court are expressly kept open. Writ petition stands disposed of.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23