

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12712 OF 2022

1. Ashok Dattatray Walzade
Age: 70 years, Occu.: Business,
R/o. Main Road, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.

2. Dattatray Damodhar Pabalkar
Age: 50 years, Occu.: Business,
R/o. Nashik Road, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.

3. Pradip Gopinath Karpe,
Age: 58 years, Occu.: Business,
R/o. Vidyanagar, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.

4. Sham Balaji Karpe
Age: 51 years, Occu.: Business,
R/o. Ganesh Nagar, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.

.... Petitioners

Versus

1. Tilvan Teli Samaj Trust,
A/230, Main Road, Shri Krushna Temple
Sangamner,
Through its Secretary,
Kantika Ashok Walchaure
Age : 60 years, Occu.: Household,
R/o. Laxmi Chauk, Sangamner,
Dist. Ahmednagar.

2. Sharda Gorakshak Karpe
Age: 39 years, Occu.: Household,
R/o. Jantanagar, Sangamner,
Dist. Ahmednagar.

3. Suvrna Sanjay Karpe
Age: 40 years, Occu.: Household,
R/o. Main Road, Sangamner,
Dist. Ahmednagar.

4. Kantika Ashok Walchaure
Age : 60 years, Occu.: Household,
R/o. Laxmi Chauk, Sangamner,
Dist. Ahmednagar.
5. Anuradha Dipak Karpe
Age : 50 years, Occu.: Household,
R/o. Main Road, Sangamner,
Dist. Ahmednagar.
6. Ranjana Kailas Shinde,
Age : 45 years, Occu.: Household,
R/o. Main Road, Sangamner,
Dist. Ahmednagar.
7. Surekha Someshwar Karpe
Age : 60 years, Occu.: Household,
R/o. Ashok Chauk, Sangamner,
Dist. Ahmednagar.
8. Sunita Ramesh Divate
Age : 40 years, Occu.: Household,
R/o. Shivaji Nagar, Sangamner,
Dist. Ahmednagar.
9. Mohini Mahesh Walzade
Age : 38 years, Occu.: Household,
R/o. Ganesh Nagar, Sangamner,
Dist. Ahmednagar.
10. Tarkeshwari Shamrao Walzade,
Age : 50 years, Occu.: Household,
R/o. Koshti Galli, Sangamner,
Dist. Ahmednagar.
11. Kaveri Dhiraj Rahatekar
Age : 35 years, Occu.: Household,
R/o. Devi Galli, Sangamner,
Dist. Ahmednagar.
12. Archana Santosh Kshirsagar
Age : 32 years, Occu.: Household,
R/o. Neharu Chauk, Sangamner,
Dist. Ahmednagar.

13. The Joint Charity Commissioner,
Pune Region, Pune.

14. The Assistant Charity Commissioner,
Ahmednagar

.... Respondents

.....

Ms. Madhaveswari S. Mhase, Advocate for the Petitioners.

Mr. A.S. More, Advocate for Respondent Nos.1,2, 4 to 7 & 9 to 12

Mr. S.W. Munde, AGP for Respondent Nos.13 and 14

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th MARCH, 2023

ORAL JUDGMENT :

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

2. By this petition, filed under Article 227 of the Constitution of India, the petitioners assail the common order dated 28/04/2022 passed by the Assistant Charity Commissioner, Ahmednagar, below Exhibits-23, 24, 25 and 26 in Change Report No.1065 of 2019.

3. Respondent No.1 is a religious Trust, has its objectives as social, cultural and education activities, registered under the provisions of Maharashtra Public Trust Act.

4. Change Report No.1065 of 2019 is filed by respondent Nos. 2 to 12 claiming that after holding elections, they were elected as managing trustees of Respondent No.1/Trust. In the said inquiry, petitioners filed applications Exhibits 23, 24, 25 and 26 under Section 73-A of the Maharashtra Public Trust Act (for short, 'the said Act') for their impleadment, claiming that they being interested persons, may be added as a party to the said inquiry. Respondent Nos.2 to 12 opposed the applications. Respondent No.14, by the common order, rejected the said applications on the ground that though the petitioners are resident of the said village, wherein temple is situated, they failed to prove that they participated in the religious functions of the said temple. It is also held that, by filing the applications, petitioners are trying to prolong the proceedings. This order is impugned in the present petition.

5. Heard the learned advocate for the petitioners, learned advocate for the respondents and the learned Assistant Government Pleader for respondent Nos.13 and 14. Perused the memo of writ petition, documents placed on record and the impugned order.

6. Record indicates that the petitioners claim that they are life members of the Trust. In support of the said, the petitioners have placed on record copy of membership register maintained by the Trust. In the said register, names of the petitioners appear at Sr. Nos. 7, 14, 45 and 52. Agenda of the meeting dated 16/04/2019 was circulated. The list of life members, who received the agenda is placed on record by the petitioners. Names of the petitioners appear at Sr. No.21, 325, 326 and 327. These documents, *prima facie*, indicate that petitioners are life members of the Trust, and therefore, they are persons interested in the Trust. The petitioners also contend that they are participating in all the religious functions of the temple.

7. Section 73-A gives power to the inquiry officer to join persons having interest in the public trust as a party to any proceedings under the said Act.

8. The definition of person having interest is given in sub-section 10 of section 2 of the said Act, which is an inclusive definition. In terms of clause (e), persons having interest includes, "*in the case of any other public trust, (any trustee or beneficiary)*".

9. Respondent No.14, has ignored the above legal provisions as well as the documents placed on record by the petitioners in support of their claim that they are life members of the Trust, while rejecting their applications for impleadment. No prejudice is likely to be caused to the respondents, if the petitioners are allowed to join the inquiry and submit their objections.

10. Respondent No.14 has erred in rejecting the applications filed by the petitioners, and thereby failed to exercise jurisdiction vested in him. The impugned order since vitiated on the ground of non application of mind cannot be sustained.

11. Resultantly, the writ petition is allowed in terms of prayer clause (B).

12. Impugned order dated 28/04/2022 passed by the Assistant Charity Commissioner, Ahmednagar, below Exhibits 23, 24, 25 and 26 in C.R. No.1065 of 2019, is quashed and set aside.

13. Applications below Exhibits-23, 24, 25 and 26 are allowed.

14. The petitioners are allowed to intervene and submit their objections and participate in the inquiry of Change Report No.1065 of 2019.

15. Considering the fact that Change Report inquiry is pending since 2019, respondent No.14 shall decide the same within six months from the date of receipt of writ of this order.

16. Parties shall co-operate

Rule is made absolute in the above terms. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane