

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.6292 OF 2022

Bhaskar Eknath Vadnere and Others ...Petitioner
vs.

Joint Charity Commissioner,
Nashik Region, Nashik and Others ...Respondents

Dr. Uday Warunjikar a/w. Mr. Siddhesh Pilankar, for the Petitioner.
Mr. Vivek Punjabi, for Respondent Nos. 2 to 4 and 6 to 17.
Mr. M.U. Rajput, for Respondent No. 5.
Mr. C.D. Mali, AGP for the State.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 31, 2023

P.C.:

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, heard finally at the stage of admission.

2. This petition assails the legality, propriety and correctness of an order passed below application (Exhibit 40) in Inquiry Application NO. 2 of 2021 by learned Joint Charity Commissioner, Nashik thereby directing constitution of a body to conduct election to the trustees of Ahir Suvarnakar Samaj Sanstha, Nashik, respondent No. 2, a trust registered under the Maharashtra Public Trust Act, 1950 (the Act, 1950).

3. Background facts can be stated as under:-

a] Ahir Suvarnakar Samaj Sanstha, Nashik is a public trust formed by the members of the Ahir Suvarnakar Community. The trust owns a number of movable and immovable assets. There have been proceedings in relation to the affairs of the trust.

b] The petitioners herein preferred an application being Inquiry Application No. 2 of 2021 seeking injunctive reliefs against respondent Nos. 3 to 17 and for a direction that till the proceedings pertaining to respondent No. 2 trust were adjudicated, the Inspector attached to the public trust registration office, Nashik be appointed as an administrator to administer the affairs of the respondent No. 2- trust. In the said application, the respondent preferred an application seeking direction to hold election to the office of the trustees of respondent No. 2 on the basis of an updated list of members of the trust prepared by the respondent Nos.3 to 17. They contended there were 1290 members of the trust and the list of 1535 members consisted of names of many members who had passed away and there were double entries of one and the same member.

c] By the impugned order the learned Joint Charity

Commissioner was persuaded to constitute a committee of 5 members to hold an election to the office of the trustees. The committee was directed to hold the election in accordance with the members' list maintained in the trust. The election was to be supervised by the jurisdictional inspector attached to the public trust registration office. Incumbent members of the board of the trustees were directed to provide requisite information and documents as may be sought for by the said committee. The election was to be held within three months thereof.

4. Being aggrieved, the petitioners have invoked the writ jurisdiction of this Court. The petitioners assert that in an application for injunctive reliefs there was no occasion for the learned Charity Commissioner to direct holding of election to the office of the trustees. In the absence of written constitution of the trust, no directions to hold the election could have been issued.

5. The learned counsel for the petitioners would urge that the petitioners principal grievance is the induction of Kailash Wagh in the committee constituted to hold the election. Since Mr. Kailash Wagh is an incumbent member of the board of trustees, he would

influence the process of election. Therefore, the impugned order deserves to be interfered with.

6. In opposition to this, the learned counsel for the respondent Nos. 2 to 4 and 6 to 17 submitted that the impugned order was passed with the consent of the parties. It was submitted that the petitioners have not placed on the record of the Court the pursis which was filed on behalf of the petitioners and on the strength of which the impugned order came to be passed. Having given consent for holding the election and even suggested the names of the members to be included in the committee for holding the election, it is now not open for the petitioners to assail the order, urged the learned counsel for the respondents. In any event, the absence of an elected body to administer the affairs of the trust was the grievance of the petitioners also. Therefore, the Joint Charity Commissioner was well within his rights in ordering holding of the election to the office of the trustees.

7. I have perused the impugned order. In the context of the controversy sought to be raised on behalf of the petitioners, it may be expedient to extract the relevant part of the impugned order. It reads as under:-

“Read application. Say not field. Heard both sides. It is submitted by learned Advocate Sayyed on last date that Ad-hoc body be appointed as per pursis and election programme will be fixed. It is submitted by learned Advocate Mujumdar that election be taken but as per pursis and election committee be appointed.

2] Heard Shri Kishor Ghodke in person. Since long, there is dispute between both sides regarding trust and its managing committee. Due to dispute day to day smooth functioning of trust is hampered which is causing loss and defamation to trust. It is necessary to put an end otherwise it will cause huge loss to trust and reputation. Considering age of applicant, it is necessary to given certain direction otherwise dispute will not come to an end. This authority is bound to protect interest and benefit of trust and in order to smooth functioning of trust, it is necessary to give direction for election.

3] It is submitted that new members are not enrolled by any party. If Ad-hoc body appointed it will given rise to dispute and the purpose of giving direction for election will be frustrated. In the interest of trust following election body/committee will be found.”

8. The aforesaid order would indicate that not only the parties were heard but also the parties had filed pursis incorporating the names of the persons who they desired to be appointed as the members of the committee to hold the election. Secondly, the learned Joint Charity Commissioner adverted to the situation which arose on account of the fractious and factional disputes amongst the members of the trust. It was noted that the disputes were adversely effecting the administration of the affairs as well as the image of the trust. In order to put an end to the perennial disputes, the learned Joint Charity Commissioner considered it appropriate to hold election to the board of trustees by appointing a committee to hold such election.

9. The fact that the petitioners and respondents had filed pursis indicating the names of the members to be included in the

committee is borne out by the copies of those pursis annexed to the affidavit in reply (Exhibit R5 colly., page 136/137). The petitioners had suggested the names of Krushna Damodarsheth Bagul and Vinod Subhashsheth Thorat. The respondent Nos. 3 to 17 suggested the names of Kailas Dhondusheth Wagh and Rakesh Rameshsheth Dusane. In the pursis filed by the petitioners, it was specifically mentioned that the names suggested by the petitioners be included in the committee to be constituted for holding the election.

10. It is imperative to note that all the above four names find mention in the committee constituted by the learned Joint Charity Commissioner. In addition Kishor Gopalrao Ghodke, who appeared in person at the time of hearing of the said application (Exhibit 40), was also nominated to the said committee by the learned Joint Charity Commissioner.

11. In the aforesaid view of the matter, on first principles having given consent to appoint a committee to hold election to the board of trustees and suggested the names of two persons to be included in the said committee, it is now not open to the petitioners to urge that in an application for injunctive reliefs and appointment of administrator to administer the affairs of the trust, the Charity

Commissioner could not have ordered holding of election. I find substance in the submission of Mr. Vivek Punjabi, the learned counsel for respondent Nos. 2 to 4 and 6 to 17 that the order came to be passed by consent of the parties.

12. Even otherwise, on merits, in the circumstances of the case, the learned Joint Charity Commissioner does not seem to have committed any error in directing holding of the elections. The learned Joint Charity Commissioner has considered the multifarious proceedings instituted in respect of the respondent No. 2 trust and found holding of election to the board of trustees to be the only way to put an end to recurring disputes. Moreover, the order seems to have passed in exercise of the *parens patriae* jurisdiction.

13. Lastly, the objection to the inclusion of the names of Kailas Dhondusheth Wagh in the said committee does not seem to be based on a ground which would unmistakably indicate that Kailas Wagh is thoroughly disqualified to be a member of such committee. Since the learned Joint Charity Commissioner included two names suggested by each of the contesting parties and added the name of Kishor Ghodke, who appeared in person, I do not find that there is any justifiable reason to interfere with the impugned order.

Resultantly, the petition fails.

Hence, the following order.

ORDER

1] The petition stands dismissed.

2] Rule discharged.

3] No order as to costs.

(N. J. JAMADAR, J.)