

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

WRIT PETITION NO.14657 OF 2022

James Baker and Another ...Petitioners
vs.
State of Maharashtra and Others ...Respondents

Mr. Feroz Bharucha i/b. Mr. Daljeetsingh Bhatia, for the Petitioners.
Mr. P.P. Pujari, AGP for Respondent No.1- State.
Mr. Vachan Bodke i/b. V & M Legal, for Respondent No. 2.

CORAM : N. J. JAMADAR, J.

DATE : JUNE 13, 2023

P.C.:

1. Rule. Rule made returnable forthwith and with the consent of the learned counsel for the parties, heard finally.

2. This petition assails the legality, propriety and correctness of the order dated 3rd November, 2022 passed by the learned Charity Commissioner, Mumbai in Misc. Application Nos. CC/38/2021 and CC/40/2021 whereby the petitioners sought to intervene in the Restoration Application No. 40 of 2021 in Misc. Application No.43 of 2004 in Application No. J-4/54 of 2000 preferred on behalf of the Bombay Diocesan Trust Association Private Limited, a public trust registered under the Maharashtra Public Trust Act, 1950 (the Act, 1950).

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This is a corrected order as per Speaking to Minutes Order dated 06-07-2023.

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3. The petitioner No. 1 claims to be treasurer/trustee/director/member of the Bombay Diocesan Trust Association Private Limited (BDTA), the trust. Petitioner No. 2 is the secretary/trustee/director/member of BDTA.

4. BDTA had preferred an Application No. J-4/54 of 2000 under section 36(1)(a) of the Maharashtra Public Trust Act, 1950 for permission to sale the trust property bearing Survey No. 6686 of Shahapur II, Mirzapur Road, Dist. Ahmedabad. The said application came to be allowed by an order dated 31st July, 2000 permitting the sale of the trust property subject to certain terms and conditions.

5. A modification of the aforesaid order passed by the learned Joint Charity Commissioner, Mumbai was sought on behalf of the trust to the effect that the period provided thereunder for the development of the property belonging to the trust be extended. The said application came to be disposed by an order dated 13th August, 2021 for want of prosecution as none appeared for the applicant since the year 2004.

6. The respondent No. 1 trust preferred an application for restoration of the aforesaid Misc. Application No. 43 of 2004.

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Petitioners sought to intervene in the said proceeding. It was inter alia averred that the petitioners were the elected trustees of the respondent No. 1 trust and suppressing the development in the intervening period an endeavour was being made by the trustees of the respondent No. 1 trust to restore the proceedings which were instituted in the year 2004 and the presence of the petitioners in the said application was imperative to protect the interest of the trust.

7. By the impugned order, the learned Charity Commissioner was persuaded to reject the application opining that the applicants were not the trustees of the trust and therefore they would not fall within the definition of “interested person” under section 2(10) of the Act, 1949.

8. Being aggrieved, the petitioners have preferred this petition.

9. An affidavit in reply is filed on behalf of the respondents.

10. I have heard Mr. Feroz Bharucha, learned counsel for the petitioners, Mr. Vachan Bodke, learned counsel for Respondent No. 2 and Mr. P.P. Pujari, learned AGP for respondent No.1- State. With the assistance of the learned counsel for the parties, I have perused the material on record.

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11. Indisputably, the petitioners were elected as trustees of respondent No. 1 trust. The petitioners were elected as the treasurer and secretary of the executive body of respondent No. 1 trust for the year 2018-2019. Respondent No. 2 asserts that the petitioners were removed from their respective posts as well as the office of the trustee of respondent No. 1 under a resolution dated 17th August, 2019 passed by the executive body. On the aforesaid premise, the learned Charity Commissioner was persuaded to hold that since the petitioners ceased to be trustees of the respondent No. 1 trust, and they were not beneficiaries, they had no locus standi to be impleaded as intervenors by invoking the provisions contained in section 73A read with 2(10) of the Act, 1950.

12. Mr. Bharucha, the learned counsel for the petitioners submitted that the learned Charity Commissioner was in error in declining to permit the petitioners to intervene on the premise that the petitioners were divested of the office of the trusteeship on 17th August, 2019 and that they were not interested person.

13. In contrast, the learned counsel for respondent No. 2 took the Court through the impugned order and the documents on record to lend support to the submission that with the removal of the

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petitioners from the office of trusteeship, the petitioners ceased to be persons having interest in the affairs of the trust.

14. On first principles, in the face of indisputable position that in the election held in the year 2017 for the executive body constituted in the year 2018-2019, the petitioners were elected as trustees of respondent No.1- trust, it would be rather incongruous to urge that the petitioners are not “persons having interest in the trust”. The locus of the petitioners is sought to be questioned on the ground that they were removed from the office of the trustee pursuant to the resolution passed by the executive body of the trust. Implicit in this contention is an admission that the petitioners, being persons having interest, were elected as the trustees and the office bearers of respondent No.1-trust.

15. It seems that the learned Charity Commissioner has adopted a very technical view of the matter. The question as to whether the petitioners were lawfully removed from the office of the trust is, undoubtedly, a matter for determination. Indisputably, the reports, reporting the aforesaid alleged change, are subjudice before the competent authorities under the Act, 1950. However, that does not detract materially from the petitioners claim that they are the

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persons having interest in the affairs of the respondent No. 1 trust.

16. The nature of the underlying proceedings in which the intervention was sought also assumes importance. It is imperative to note that by the Misc Application for modification of the order dated 31st July, 2000, the respondent No. 1 sought further extension of time to comply with the conditions subject to which the permission for sale was granted. Revival of the said proceedings would have a bearing on the property of respondent No. 1. In the backdrop of the time lag, the presence of the petitioners in the said Misc. Application, which seeks to revive the Misc Application No. 43 of 2004, would assist the learned Charity Commissioner in arriving at a just decision of the case. The time lag of two decades in seeking modification is too long for comfort to dismiss the application on a technical ground that the petitioners ceased to be the trustees of the trust, where the action of alleged expulsion of the petitioners from the office of the trustee is contentious.

17. In substance, once it is conceded that the petitioners were the trustees of the trust and their removal from office of trustee is subjudice, the learned Charity Commissioner could not have rejected the application for impleadment especially in the light of

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prayers in the Restoration Application and the consequences the restoration would entail.

18. Section 73A of the Act, 1950 empowers the authorities under the Act to join any person having interest in the public trust as a party to proceedings under the Act, 1950. Under sub section (10) of section 2 of the Act, 1950 in case of public trust, other than the trusts described in clauses (a) to (d), “any trustee or beneficiary” is included in the definition of “person having interest”. A beneficiary is, in turn, defined in subsection (2A) of section 2 to mean “any person entitled to any of the benefit as per the objects of the trust explained in the trust deed or the scheme made as per the said Act and constitution of the trust and no other person”.

19. In view of the inclusive definition of, “person having interest”, it would be rather difficult to accede to the submission on behalf of respondent No. 1 that the petitioners ceased to be the persons having interest in the trust upon their removal as trustee, not by the Charity Commissioner in exercise of the powers under the Act, 1950 but under a resolution passed by the executive body of the respondent. Hence the impugned order holding that the petitioners are not persons having interest in the trust, deserves to be

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interfered with.

20. Even otherwise, the presence of the petitioners in Misc. Application NO. 43 of 2004 would assist the learned Charity Commissioner in deciding the restoration application and, in the event it is allowed, the Misc. Application No. 43 of 2004 in a just manner. Ultimately, the property of the trust would be at stake.

21. For the foregoing reasons, the petition deserves to be allowed.

Hence, the following order.

ORDER

- 1] The petition stands allowed.
- 2] The impugned order dated 3rd November, 2022 stands quashed and set aside.
- 3] The application stands allowed.
- 4] The petitioner No. 1 be impleaded as Intervener in Restoration Application No. 40 of 2021 in Misc. Application No. 18 of 2004 and Restoration Application No. 38 of 2021 in Misc. Application No. 43 of 2004 in Application No. J-4/54 of 2000.
- 5] Necessary amendment be carried out by the applicants therein within a period of two weeks.
- 6] It is hereby made clear that this Court has not delved into the

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merits of the substantive proceedings and the observations hereinabove are confined to the consideration of the impleadment of the petitioner No. 1 as Intervener in Restoration Application No. 40 of 2021 and Restoration Application No. 38 of 2001.

7] Rule made absolute to the aforesaid extent.

8] In the circumstances, there shall be no order as to costs.

(N. J. JAMADAR, J.)

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