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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 7038 OF 2023

(Harishchandra Sadashiorao Gawande and others...Vs.. Ld. Assistant Charity
Commissioner-1, Akola and others)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. K.P. Mahalle, advocate for petitioners.
Mr. C.A. Lokhande, AGP for respondent No. 1.
Mr. P.S. Kavishwar, advocate for respondent No. 3.

CORAM : AVINASH G. GHAROTE, J.
DATE : 12-12-2023

Mr. K.P. Mahalle learned counsel at the
outset seeks to delete respondent No. 3 on account of
the fact that he is no more.

2. The statement is accepted. Respondent
No.3 be deleted from the array of respondents at the
risk and consequences of the petitioners.

3. Heard Mr. K.P. Mahalle, learned counsel for
petitioners, learned AGP for respondent No. 1/State
and Mr. P.U. Kavishwar, learned counsel for respondent
No.3.

4. The petition questions the order dated
09.08.2023, passed by Assistant Charity Commissioner,
Akola on application filed by the petitioners to implead
themselves as objectors in change report enquiry under

Section 22 of the Maharashtra Public Trust Act, 1950 (“MPT Act”, for short hereinafter) filed by the respondent No. 2, in respect of Shri Miraji Maharaj Sansthan, Lohari-Bk. which is a registered public trust.

5. Mr. K.P. Mahalle learned counsel for the petitioners submit that the finding recorded by the learned Assistant Charity Commissioner that the proposed objectors have failed to prove how their impleadment would assist the authority in determining the change report and therefore, their impleadment is not necessary, which view is taken relying upon ***Satish Vasant Salpekar Vs. Ashwin Ghatate, 2018(2) Mh.L.J. 57.***

6. Mr. K.P. Mahalle, learned counsel for the petitioners submits that the petitioners have already filed an application under Section 41(d) and 50 of the MPT Act in respect of a question which is pending for adjudication before the Assistant Charity Commissioner. He submits, that this would in conjunction with the fact that, in case, vacancy arises of a trustee, the scheme of the trust requires that the same should be filled in by the villagers by elections which would indicate that the petitioners would be the persons interested under Section 2(10) of the MPT Act, so also, would be in a position to assist the Court in pointing out the irregularities in the election.

7. Though, learned counsel Mr. Kavishwar opposes contending that there is no reason given in the application as to how the presence of the petitioners, would be necessary to assist the Court in deciding the application, what is necessary to be considered is the language of Section 73A of the MPT Act, which mandates that in any proceeding under the Act, any person having interest in public trust may be joined as a party to the proceedings on an application made by such person. This would clearly indicate that requirement of Section 73A of the Act is for a person to demonstrate that he is having interest in the public trust and based upon this discretion of the learned Assistant Charity Commissioner, being exercised in his favour, in light of the word “may” occurring therein.

8. In the instant case, it is not disputed, that the petitioners have already filed an application under Section 50-A and 41-D of the MPT Act in respect of the said Trust. It is also not in dispute that the petitioners are residents of the village in which the trust is situated nor it is a disputed position that the mode of election of the trust in case of creation of vacancy is by election in which all the villagers are entitled to participate. This would clearly indicate that considering the language of Section 2(10) of the MPT Act, the petitioners would be a persons having interest and therefore would be entitled to be joined as a party to the proceedings

under Section 22 of the MPT Act in light of the mandate of Section 73-A of the MPT Act. Though, it is contended by Mr. Kavishwar, learned counsel for the respondent No. 3 that there is no reason given in the application as to how the presence of the petitioners, would assist the Assistant Charity Commissioner in deciding the change report, that will have to be spelt out in the objection which may be filed by the petitioners upon their application allowed. Needless to say that the objection will have to be tested by the Assistant Charity Commissioner while deciding change report, in case, it is permissible to be so raised now.

9. In *Satish Vasant Salpekar Vs. Ashwin Ghatate* (supra), the Court had held that there was failure to demonstrate as to how the presence of the trustee in proceedings under Section 22 of the MPT Act would make them persons interested in respect of change reports which were filed prior to they becoming trustees of the trust. The factual position in the instant matter, is somewhat different in light of the trust deed, which permits every villager to participate in the election, in view of which, every villager would have right to object to the nature and manner in which election has been held, which can only be tested in proceedings under Section 22 of the MPT Act. That being the position, the impugned order is hereby quashed and set aside and the application for

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impleadment is allowed.

10. Petition is allowed in the above terms. No costs.

[AVINASH G. GHAROTE, J]

Belkhede