ATUL GANESH KULKARNI
Digitally signed by ATUL GANESH KULKARNI
Date: 2024.03.19 16:57:27 +0530

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3498 OF 2024

Nanik Kukreja … Petitioner

V/s.

The State of Maharashtra & Ors. … Respondents

AND

WRIT PETITION NO.3502 OF 2024

Shyam Shroff … Petitioner

V/s.

The State of Maharashtra & Ors. … Respondents

Mr. Tahir Pande with Mr. Vibhav Krishna i/by Juris Consillis for the petitioner in both the WPs.

Mr. Swapnil P. Kamble, AGP for respondent Nos.1 & 2/ State in WP/3502/2024.

Mr. R.S.Pawar, AGP for respondent Nos.1 & 2/ State in WP/3498/2024.

Mr. Girish S. Godbole, Senior Advocate i/by Mr. Nikhil Mishra for respondent Nos.3, 5, & 6 in both the WPs.

Mr. Sagar Deb for respondent Nos.8 to 24 in both the WPs.

CORAM : AMIT BORKAR, J.

DATED : MARCH 12, 2024

P.C.:

1. The challenge in both these writ petitions is to the order dated 2 February 2024 passed by the Charity Commissioner, Maharashtra State granting a stay to the order dated 17 July 2023 passed by the Assistant Charity Commissioner granting registration to a Public Trust under Section 19 of the Maharashtra Public Trust Act, 1950 ("the said Act" for short).

2. The facts relevant for adjudication of the present writ petitions in short are as under:

It is not in dispute that a Trust Deed was executed on 4 October 1934 titled as 'Khar Gymkhana Trust Deed'. Since it was a Private Trust, the rights and liabilities were governed by the Indian Trust Act, 1882.

3. Respondent No.1 filed an application bearing No.ACC-IV/2675/2015 for registration of Khar Gymkhana as a Public Trust. On 30 September 2015, the Public Trust Registration Office issued a public notice calling for objections on an application filed by respondent No.7. On 8 January 2016, one of the trustees (Anshi Gurusahani) objected. On 9 May 2018, the office-bearers of the Khar Gymkhana filed an application seeking intervention based on a decision taken by the Managing Committee meeting of the Private Trust on 5 October 2017. The application for intervention was allowed on 5 July 2018. On 9 January 2019, Aanshi Gurusahani died. On 25 November 2021, Ashok Gowariker resigned as Trustee of the Private Trust. On 7 December 2021, Bomi Mehta also resigned from his Trusteeship. In the meantime, Suit No.348 of 2021 came to be filed by the Trustees against others about the removal of Trustees, which is pending.

4. On 19 December 2021, a Special General Meeting of the Private Trust was held and five Trustees including respondent

Nos.3 to 6 (appellants before the Charity Commissioner) were appointed as Trustees of the Private Trust.

5. The Assistant Charity Commissioner, after holding an inquiry, on 17 July 2023 passed an order of registration under Section 19 of the said Act and directed the framing of a scheme for the administration of an erstwhile Private Trust. According to the petitioner on 19 July 2023, the fact of registration was intimated to the Managing Committee of the Private Trust which decided to implement the decision of registration of the Public Trust.

6. Respondent Nos.3 to 6 filed Appeal No.151 of 2023 challenging the order dated 17 July 2023 granting application for registration of Public Trust. On 1 September 2023 initially, the Charity Commissioner granted a stay to the order dated 17 July 2023 after giving an opportunity of hearing the passed impugned order confirming the ad-interim order during the pendency of the appeal. This order of confirmation of ad-interim relief is the subject matter of the present writ petitions.

7. According to the petitioner, the impugned order suffers from legal infirmity on the following grounds: (i) in the absence of an application seeking leave to file an appeal, the appeal itself was not maintainable; (ii) the Trustees of erstwhile Private Trust can be treated as an objector and were not necessary parties in the proceedings under Section 19 of the said Act. They could have objected to the registration of the Trust when a public notice was issued before holding an inquiry under Section 19. In the absence of objection from respondents Nos.3 to 6, the Assistant Charity

Commissioner was well within his rights to register the Trust; (iii) persons claiming the right of hearing in the inquiry proceedings could have filed a review application before the same authority but an appeal at their instance was not maintainable without leave to file an appeal; (iv) the order of registration has been implemented by the decision of erstwhile Committee of the Private Trust and, therefore, the order could not have stayed; (v) the issue of maintainability of appeal could not have been kept pending and without considering the said issue such order of grant of stay could not have been passed.

8. Per contra, learned senior advocate on behalf of respondents Nos.3, 5 and 6 submitted that two years before the date of passing the order of registration of Public Trust, undisputedly respondents Nos.3 to 6 were Trustees of the Private Trust. The order impugned before the Charity Commissioner indicates that the Trustees of Private Trust functioning on the date of filing of application were made parties. However, despite knowledge of the fact that respondents Nos.3 to 6 were Trustees of Private Trust two years before the order of registration, they were not made parties in the proceedings under Section 19 of the said Act and, therefore, in the absence of necessary parties, such order under Section 19 of the said Act could not have been passed by the Assistant Charity Commissioner. He submitted that undisputedly respondents Nos.3 to 6 were elected on 19 December 2021. The impugned order was passed on 17 July 2023. Therefore, the Charity Commissioner has rightly passed the impugned order granting a stay to the order of registration.

9. I have heard both sides. The issues which arise for consideration in the writ petitions broadly are two-fold: first, whether the Charity Commissioner in an appeal challenging order under Section 19 of the said Act could have entertained the application for interim relief in the absence of an application seeking leave to file an appeal; and second, whether the Charity Commissioner was within his right to grant stay to the order of registration.

10. The first point is whether the Charity Commissioner could have passed an order of stay order of registration of public trust without granting respondent Nos.3 to 6 leave to file an appeal in the facts of the case would amount to a curable procedural irregularity which does not affect merits of the case in view undisputed fact respondents no 3 to 6 are trustees of private trust sought to be converted into public trust. Respondent Nos.3 to 6 being Trustees of the Private Trust and in that capacity being a necessary party, the defect of filing an application seeking leave to file an appeal is a curable defect that can be cured even during the pendency of the appeal. However, for the protection of the properties and interests of the Public Trust, the Charity Commissioner was within its right to grant a stay to the registration of the Public Trust. The Charity Commissioner in its order has protected the rights of the Trust by observing that the grant of stay would not affect the objects of the Trust. However, to prevent further complications and unintended consequences, the Charity Commissioner has rightly exercised his power by granting a stay to the order of registration.

11. For the adjudication of the second point, it is necessary to consider that the Charity Commissioner while exercising powers under the provisions of the said Act exercises his powers in his capacity of *Parens patriae*. While exercising power under the Act, it is the duty of the Charity Commissioner to protect the interest of the Trust. In the facts of the case, though the proceedings arise out of an order under Section 19 of the said Act, however, one cannot lose sight of the fact that undisputedly the property which was subject matter of an application under Section 19 was owned by the Private Trust of which respondent Nos.3 to 6 are undisputedly Trustees. Therefore, the opportunity of hearing was required to be granted to the existing Trustees of the Private Trust before registering it under the provisions of the Act. It is not in dispute that the original applicant *were* existing Trustees, i.e. on the date of filing of the application, party to the proceedings under Section 19 but despite being aware of the fact that respondents Nos.3 to 6 were elected as Trustees of Private Trust on 19 December 2021, till passing of order of registration on 17 July 2023 they were not made parties.

12. In the absence of a provision under the Indian Trust Act for conversion of a Private Trust into a Public Trust, Section 19 of the Maharashtra Public Trusts Act appears to be the only mode for conversion of the Private Trust into the Public Trust, hence the Trustees of private trusts were required to be heard by the Assistant Charity Commissioner before passing order of registration of public trusts. Therefore, the Trustees of the Private Trust were necessary parties to the proceedings. Without joining respondent Nos.3 to 6 as the necessary party, the order dated 17 July 2023 could not have been passed. The order of registration of public trusts prejudicially affects the rights of trustees of a private trust which was passed in breach of principles of natural justice, hence charity commissioner was well within his rights to grant a stay to the order of registration of public trust having the effect of conversion of private trust into public trust.

13. The order impugned cannot be treated as perverse or suffering from error apparent on the face of the record. I am satisfied that the order passed by the Charity Commissioner meets the ends of justice. Hence, no interference in the extraordinary jurisdiction under Article 227 of the Constitution of India is called for.

14. Both the writ petitions, accordingly, stand dismissed. No costs.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 15 March 2024 to carry out corrections in paragraph 11. The corrections are shown in italicize.

This order is further modified as per order dated 19 March 2024 to carry out corrections in paragraph 13.