



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3956 OF 2023**

Adurshya Kadeshwar Guru Muppin
Kadeshwar Swamiji
Age 52 years, Occu. Social Service
R/o Siddhagiri Math at Post Kaneri
Tal. Karveer, District – Kolhapur
Also having resident at
Siddharmeshwar Mandir Jai
Rmeshwar Co-op Hsg. Goregaon,
S.V. Road, Goregaon (W)
Mumbai - 400 062

Siddhagiri Gurukul Foundation
(Siddhagiri Gurukul Trust)
Siddharmeshwar Mandir
Jai Rmeshwar Co-op. Hsg.
Goregaon, S.V. Road, Goregaon
(W) Mumbai – 400062.

.....Petitioner

Vs.

1. Shri. Rajendra Govind Kulkarni
R/o 700B, A Ward, Kolhapur.

2. Joint Charity Commissioner, I,
Maharashtra State Mumbai

.....Respondents

Mr. Yogesh Thorat a/w Mr. Ashok B.Tajane for the petitioner
Mr. V. G. Badgujar AGP for the State
Mr. A. A. Ghadge i/b Mr. Akshay Kulkarni for respondent no. 1

CORAM : GAURI GODSE, J.

DATE : 12th APRIL 2024

Oral Order:

1. Heard. Rule. Learned AGP waives service for respondent no. 2. Mr. Ghadge waives service for respondent no. 1. Rule made returnable forthwith. By consent of the parties, taken up for final disposal.

2. This petition under Article 227 of the Constitution of India is filed challenging the rejection of the petitioner's application under section 36(1)(a) of the Maharashtra Public Trust Act, 1950. The said application was filed through the sole Trustee seeking permission to sell the Trust property. Respondent no. 1 is the proposed purchaser.

3. The Learned Joint Charity Commissioner has rejected the application. In paragraph 6 of the impugned order, it is observed that as per the scheme of the Trust, there has to be an executive body with not less than seven members and all of them nominated by the sole Trustee. It is further observed that as per Clause No. 6 under head "B"

of the scheme, the executive body has to take a decision pertaining to the sale of the property, in consultation and consent of the sole Trustee. The application is also rejected on the ground that the petitioner has failed to establish any grounds of compelling necessity for the sale of Trust property.

4. Learned counsel for the petitioner submitted that when the impugned order was passed, the term of the executive committee had expired. The present writ petition was filed on 3rd May 2019. He submitted that during the pendency of the petition, the fresh executive committee was appointed on 22nd November 2022 for the term 2022-2025. He submitted that on 15th September 2023, a change report to that effect is allowed. Hence, there is an executive committee in existence as of date. Learned counsel for the petitioner has annexed a copy of the change report and a schedule of change by filing an additional affidavit. He, therefore, requests that the matter be remitted back to the Joint Charity Commissioner to enable the petitioner to add the members of the executive committee as a necessary party to the application.

5. Learned counsel for respondent no. 1 supports the submissions made on behalf of the petitioner.
6. Learned AGP opposes the said submissions on the ground that instead of remitting the matter back, the petitioner be granted liberty to file a fresh application.
7. I have perused the papers. Additional affidavit-in-reply dated 13th March 2024 indicates that the executive committee is appointed for the period 2022-2025. A necessary change report to that effect is allowed on 15th September 2023. Considering the reasons for rejecting the application and subsequent development as brought on record by way of additional affidavit, I do not see any substance in the objection raised on behalf of the learned AGP for directing the petitioner to file a fresh application. Considering the reasons recorded in the impugned order for rejecting the application, I find it appropriate to remit the matter back to the Joint Charity Commissioner to decide the application afresh after hearing all the necessary parties, including the executive committee members.
8. For the reasons stated above, the petition is partly allowed by

passing the following Order:

ORDER

(i) The Impugned order dated 4th December 2018 passed in Application No. 826 of 2018 is quashed and set aside.

(ii) Application No. 826 of 2018 is restored to the file of the Joint Charity Commissioner-I, Maharashtra State, Mumbai, for a fresh decision in accordance with law.

(iii) Petitioner is directed to add the members of the existing executive committee as reflected in the change report accepted on 15th September 2023, as necessary parties to the Application No. 826 of 2018.

(iv) Petitioner is permitted to make necessary amendment to the application within four weeks from today.

(vi) Application No. 826 of 2018 be decided after hearing all the necessary parties including the members of the existing executive committee.

(vii) Needless to record that I have not examined the Application No. 826 of 2018 on merits and hence, all contentions of all parties are kept open.

(viii) Petitioner and respondent no. 1 shall appear before the Joint Charity Commissioner-I, Maharashtra State, Mumbai on 30th April 2024 and thereafter, learned Joint Charity Commissioner shall fix the schedule of hearing.

9. Writ petition is partly allowed in aforesaid terms.

[GAURI GODSE, J.]