IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 7479 OF 2024

Marcel David D'cunha & Ors. ....Petitioners

Versus

Joint Charity Commissioner- 1 and Ors. ....Respondents

Ms. Deepa Chawan a/w Dr. Pallavi Divekar, Adv. Ravindrachik, Adv. Rohan Karande and Ms. Aishwarya Shetty i/b M/s. Divekar & Co., Advocate for the Petitioners.
Mr. Y. D. Patil, AGP, Advocate for the Respondent-State.
Dr. Virendra Tulzapurkar Senior Advocate a/w Mr. Prithvish Purohit i/b Mr. Sagar Amrut Rane, Advocate for the Respondent No.3.

CORAM : AVINASH G. GHAROTE, J.

DATE : 11th JUNE, 2024.

P.C. :

1. Heard the learned counsel for the petitioners. In a change report initiated by respondent No.3 being a Managing Trustees of the Eurcel Education Trust, the petitioner had filed an application for intervention which came to be allowed by the Assistant Charity Commissioner by his order dated 25.01.2023, on the ground, that the petitioners being the grand children of the creator of the trust

namely one Eula D’cunha were interested parties within the expression as defined in section 2(10) of the Maharashtra Public Trust Act, 1950. This order has been reversed by the learned Joint Charity Commissioner in revision filed by original trustees by the judgment dated 16.02.2024 holding that merely because the petitioners are the grand children of the creator of the trust and the children of one of the trustee, that by itself would not bring them within the meaning of the definition of ‘interested person’ as defined in section 2(10) of the MPT Act.

2. It is not in dispute that a trust was created by a trust deed dated 5th April, 2002 which by an order dated 02.08.2002 passed by the Deputy Charity Commissioner, Greater Mumbai Region, Mumbai was directed to be registered as a result of which the certificate of registration was issued on 09.08.2002.

3. The deed of trust indicated the mode of succession of the trustees which was indicated in Clause 4 of the trust deed. In pursuance to that change report has been filed by the Managing Trustees as indicated above.

4. The expression ‘persons having interest’ as defined in section 2(10) of the MPT Act, though inclusive, would not entitle the

grand children of the creator of the trust, to intervene in an application under Section 22 of the MPT Act, for the reason that by its very nature, an application under section 22 of the MPT Act is for the purpose of recording change which has occurred in the Managing Committee of the trust or the properties of the trust. On such application being filed, all that is required to be looked into by the Assistant Charity Commissioner is whether the change as reported to have occurred is within the parameters of the trust deed and the law applicable. For this purpose, the presence of the grand children of the creator of the trust would not be necessary, as that would not assist the learned Charity Commissioner in determining whether the change has really occurred or not.

5. The basic grievance of the learned counsel for the petitioners is that the Will of the creator of the trust namely Eula D'cunha, dated 8th April, 2005 which was probated and indicated a scheme for running Rose Manor Gardens school vide Clause 8 contained a stipulation that in place of the outgoing trustees, one the lineal descendants of the trustee i.e., a son or daughter be appointed, which has not been followed.

6. It is however, material note that the trust has not been

created on the basis of the Will aforesaid but is created by the trust deed dated 5th April, 2002 which has been recognized and accepted by the learned Charity Commissioner as is apparent from his order dated 05.08.2002, which has no stipulation for appointing a lineal descendant as a trustee. This position, cannot be the basis for claiming impleadment in a change report proceedings and therefore, I do not see any reason to interfere in the impugned judgment passed by the learned Joint Charity Commissioner. In case the petitioner has any grievance regarding the enforcement of the 'Will' as probated by this Court, the remedy lies elsewhere, and not before the Assistant Charity Commissioner in proceedings under section 22 of the MPT Act.

7. The petition is dismissed. No costs.

(AVINASH G. GHAROTE, J.)