

VASANT
ANANDRAO
IDHOL

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9757 OF 2024

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Date: 2024.07.23
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Bhartiya Kala Prasarani Sabha
Throu.its Sec. Pushkraj Bhalchandra Pathak ...Petitioner
Versus
Ld. Assistant Charity Commissioner
IV Pune And Anr. ...Respondents

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Mr.Yuvraj Narvankar with Ms.Nikita Kulkarni for the Petitioner.
Mr.Hamid Mulla, A.G.P for the Respondent – State.
Mr,Sandesh V. Kate for the Respondent No.2.

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CORAM : AVINASH G. GHAROTE, J.
DATE : 23rd JULY, 2024

P.C.:

1. Heard Mr.Narvankar, the learned counsel for the petitioner. It is contended that that Bhartiya Kala Prasarani Sabha, a registered Trust has 3 categories of members, 1) patron member, who has paid Rs.10,000/-, 2) life member, who has paid Rs.5,000/- and 3) ordinary member, who has paid Rs.1,000/-. Insofar as the ordinary member is concerned, in terms of clause 31(D) of the Trust Deed, they would acquire

the right of voting if the list is certified by the Deputy Charity Commissioner. It is contended that the respondent No.2, claiming to be a member of the Trust, on an earlier occasion, had filed a list of ordinary members, to be certified by Deputy Charity Commissioner, which was rejected, holding that such a list could only be filed by the Secretary, which the respondent No.2 was not. It is further contended, that in proceedings under Section 41(D) of the Maharashtra Public Trusts Act, 1950, the Joint Charity Commissioner by order dated 17.10.2018, had removed respondent No.4 along with other persons from the Board of Trustees and his such removal was not challenged by the respondent No.2. Challenge to this order was raised by some other persons in First Appeal (Stamp) No.34649 of 2018 and First Appeal No.1196 of 2018, in which by an order dated 13.12.2018 (page 200), the appeal has been admitted and stay has been granted in terms of prayer clause (a) of Civil Application (Stamp) No.34651 of 2018 (page 204).

2. It is contended that, though the stay was till 28.01.2018, the same has not been continued thereafter. It is therefore, contended that the respondent No.2 was therefore, no

longer the member of the Board of Trustees. It is also contended, that the Assistant Charity Commissioner in his order dated 27.10.2010 (page 76) has held that the respondent No.2 was not a member of the aforesaid Trust, which order came to be set aside, by the Joint Charity Commissioner by his order 14.07.2017 (page 77), which in turn has been set aside by the learned District Judge, Pune by his judgment dated 30.05.2018 (page 129). It is thus submitted that the findings that the respondent No.2 was not even a member of the Trust, has attained finality in absence of any challenge to the judgment of the learned District Judge dated 30.05.2018, on account of which the respondent No.2 could not have filed another list of ordinary member, for being certified by Deputy Charity Commissioner (page 248) dated 23.08.2018, claiming himself to be the Secretary, which application is registered as Application No.125 of 2019.

3. An objection raised regarding maintainability of the proceeding by the present petitioner has been rejected by the impugned order dated 17.05.2024 (page 32) by holding that the objection would be decided along with the application.

4. The learned counsel for the petitioner submits that

the objection as to the maintainability goes to the very root of the matter, and in case it is held that the application was not maintainable, the learned Deputy Charity Commissioner would not be required to go into the merits of the application, to examine whether the persons indicated there had indeed become the members of the petitioner Trust. There is substance in the argument, for the question of maintainability, ought to be decided first, for depending upon its result, the question about entertaining the application on merits would be dependent.

5. Mr.Kate, the learned counsel appears for respondent No.2 submits that the judgment dated 17.10.2018, passed by the Joint Charity Commissioner in proceedings under Section 41(D) of the MPT Act has also been challenged by respondent No.2 by First Appeal (Stamp) No.31529 of 2023, in which a notice has been issued, however, there is no stay.

6. Issue notice for final disposal, returnable on 12.08.2024. Mr.Kate, waives notice for respondent No.2. Learned AGP waives notice for Respondent No.1. Considering the nature of the impugned order, Mr.Kate, the learned counsel for the respondent No.2 upon instructions states, that the respondent

No.2 shall not prosecute Application No.125 of 2019 till the next date, which statement is accepted.

(AVINASH G. GHAROTE, J.)