

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12707 OF 2024**

SKMM Sanskar Trust and ors. ... Petitioners

versus

The Charity Commissioner and ors. Respondents

Mr. Rubin Vakil, Ms. Heena T., Mr. Rishit Vimadalal and Ms. Isha Tahkur
i/b. Vimadalal and Co., Advocates for the Petitioners
Ms. Gauri Jadhav, A Panel Counsel along with Mr. Hamid Mulla, AGP for
Respondent Nos.1 to 3.

CORAM : R. M. JOSHI, J.

DATE : 10th SEPTEMBER, 2024.

P.C. :

1. This petition takes exception to the order dated 7th May 2024 passed by the Assistant Charity Commissioner in Application No.ACC/VII/07/2019 filed by the petitioners under Section 51 of the Maharashtra Public Trusts Act 1950 (for short "the Act") seeking consent of the Charity Commissioner for filing a suit against the vendors for seeking declaration that the trust is the owner of the subject property.

2. The Assistant Charity Commissioner, by passing the impugned order, has simply filed the application and disposed it of. This makes clear that the application filed under Section 51 of the Act has neither been granted nor refused.

3. Learned counsel for the petitioners, submits having regard to the provisions of Section 50(iv)(p) of the Act, it is open for the Trust to seek consent from the Charity Commissioner for filing a suit seeking declaration in favour of the Trust. He drew attention of the Court to the declaration proposed to be sought by the Trust. It is his submission that in such circumstances, it was mandatory for the Charity Commissioner under Section 51 of the Act either to grant or refuse such consent and it is not open to file application and dispose the same of. He, therefore, contends that it is a fit case wherein an interference is required in the impugned order.

4. Learned AGP opposed the petition firstly on the ground that the petition is not maintainable as appeal is provided under Section 51(2) of the Act against the order impugned. It is his submission that even otherwise, the order impugned does not deserve any interference.

5. At this stage, it would be necessary to take note of the provisions relevant for decision of this petition. Section 50(iv)(p) reads thus :

“50.Suit by or against or relating to public trusts or trustees or others:

In any case, -

(i)xxxx

iv)for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof, the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons

having an interest in case the suit is under sub-clauses (i) to iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in section 51 may institute a suit whether contentious or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs:—

(a)....

(p) declaration or denying any right in favour of or against a public trust or trustee or trustees or beneficiary thereof and issuing injunctions in appropriate cases; or”

This provision clearly shows that it is open for the Trust to seek a declaration or even an injunction in favour of the Trust in appropriate cases. There could be situations when a trust is required to institute a suit in the interest of the trust. A suit can be filed on behalf of Trust by any one of the trustee when so authorised in that behalf by the rest.

6. Section 50 deals with suit by or against or relating to public trust etc. It begins with words “in any case” meaning thereby in all cases referred in clauses (i) to (iv), if any suit is to be filed by or against trust, consent of charity commissioner is necessary under Section 51.

Section 51 of the Act reads thus;

“51. Consent of Charity Commissioner for institution of suit.

(1) If the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent. If the Charity Commissioner after hearing the parties and making such enquiries if any) as he thinks fit is satisfied that there is a prima facie case, he may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal.

(2) If the Charity Commissioner refuses his consent to the institution of

the suit under sub-section (1), the persons applying for such consent may file an appeal to the Court, as if such order was an order passed by the District Court from which an appeal lies, within sixty days from the date of the said order, which shall otherwise be final.

(3) In every suit filed by persons having interest in any trust under section 50, the Charity Commissioner shall be a necessary party."

It is clear from above provision that if the persons having interest in any public trust intend to file suit in the nature specified under Section 50, shall apply to the Charity Commissioner in writing his consent.

7. Term "person having interest" is defined in Section 2(10) which is as under :

2. Definitions.

.....

"(10) "person having interest" includes-

(a) in the case of a temple, person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in that habit of partaking in the distribution of gifts thereof,

(b) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs,

(c) in the case of a wakf, a person who is entitled to receive any pecuniary or other benefit from the wakf and includes a person who has right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, maqbara or other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf,

(d) in the case of a society registered under the Societies Registration Act, 1860, any member of such society, and

(e) in the case of any other public trust any trustee or beneficiary;"

As per clause (e), any trustee, in case of any other public trust, is a person having interest. Since any suit could be filed on behalf of the

trust through a trustee, he becomes person having interest, as contemplated by Section 51 of the Act. A combined plain reading of provisions of Sections 50, 51 and Section 2 (10) of the Act, indicates that even in case of a suit to be filed by a trustee on behalf of the trust, permission under Section 51 is necessary.

8. In the instant case, the declaration proposed to be sought by the petitioners reads as under :

- i.) That the Plaintiff (Petitioner No. 1) through its trustees is the sole, exclusive and lawful owners of the subject property;*
- ii.) That Petitioners, being the owners of the Subject Property, are entitled to enter the names of Plaintiff Nos. 2 to 5 (Petitioner Nos. 2 to 5) in the revenue records and all other government records, including but not limited to the Survey Register for the Town and Island of Bombay commonly known as Property Card (under Section. 282 of the Maharashtra Land Revenue Code, 1996) maintained by Mumbai City Survey and Land Records/Superintendent of Land Records;*
- iii.) For other consequential reliefs.*

9. In the light of the aforestated facts and provisions of the Act, an application was filed under Section 51(1) of the Act for seeking consent of the Charity Commissioner for institution of suit against the vendor.

10. No doubt, sub-section 2 of Section 51 provides for an appeal to the District Court against grant or refusal of such consent. Here in this case, however, there is neither grant nor refusal of the consent. Nor even it is held that no such permission would be necessary. The Assistant

Charity Commissioner has simply filed the application and disposed it of. In such circumstances, the petitioners are denied remedy of appeal against such order under Section 51(2). This Court, therefore, finds no reason to refuse entertainment of present petition.

11. The order impugned reads as follows :

"The applicant filed this application under section 51 of the Maharashtra Public Trusts Act, 1950 for prior consent of this authority to institute the suit against the concerned person for the execution of conveyance deed. On perusal of Exh. 01 it is seen that this application is not made for institution of suit against the trust. Therefore, this authority directed the, applicant to show the provision that prior permission is necessary for institution of suit against the individual, but applicant failed to do so. Hence, in the absence of proper and appropriate provision it is very difficult for this authority to give prior consent to institute the suit. Therefore, considering all the facts and circumstances and on perusal of relevant provisions of the Act this authority passes the following order.

ORDER

1. The present application is filed and disposed off."

12. Perusal of the order indicates that the Assistant Charity Commissioner has not applied his mind to the application filed by the petitioner-Trust, that the consent sought for filing of the suit against vendor for seeking declaration in respect of the subject property and ignored provisions of the Act, more particularly, Sections 50, 51 and Section 2(10) while passing order impugned. In view of the above quoted provisions of the Act and in facts of the case, it was not be open for the Charity Commissioner to simply file application. Hence, impugned order

cannot sustain and as such, same is set-aside. The matter is relegated back to the Assistant Charity Commissioner for decision afresh in accordance with law, having due regard to the application filed by petitioners.

13. Considering the fact that the application was filed in the year 2019, Assistant Charity Commissioner is directed to decide the application within a period of 15 days from the date of communication of the order.

14. The petition stands allowed in above terms.

15. It would be responsibility of the petitioners to communicate this order to the concerned authority.

16. Parties to act upon authenticated copy of this order.

(R. M. JOSHI, J.)