

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.429 OF 2024

IN

FIRST APPEAL NO.54 OF 2024

Arti Sanjeev Mahajan : Applicant

IN THE MATTER OF

Arti Sanjeev Mahajan : Appellant

Vs.

Sanobar Salamat Irani & Ors. : Respondents

Adv. Mayur Khandeparkar & Mr. Gaurav Mehta a/w Adv. Raksha Kothari, Adv. Naresh Chheda, Adv. Sakina Electricwala & Adv. Rishabh Murli i/by Dhruve Lilidhar & Co. for the Appellant.

Adv. Anurag Mishra a/w Kiran Salesa for the Respondent Nos.1, 2 & 3.

Mr. Abhay Khandeparkar, Senior Advocate a/w Shreyas Deshpande & Farhan Shaikh for the Respondent No.4.

CORAM : KISHORE C. SANT, J.

DATE : 17th JANUARY, 2024

PC. :

1. Heard the parties for some time.
2. The case of the Appellant/Applicant is that though the Trust is not a registered as Will and the proceeding is going on under Section 18 before the Joint Charity Commissioner, Pune. The Respondents approached the Assistant Charity Commissioner under Section 41E seeking injunction against the present Applicant. The learned Joint Charity Commissioner

entertained the Application and granted injunction against the present Applicant that he shall not create third party interest or deal with or dispose of or alienate the trust properties as mentioned in para 3 of the Application without prior permission of this authority.

3. It is the submission of the learned Advocate that one Jamshedji Anklesaria had executed a Will. In the Will it is expressed that the properties mentioned in the Will are to be used for public purpose. He submits that the properties are not thus the properties of public trust as such. Pending inquiry under Section 18 it was not proper for the Joint Charity Commissioner to entertain the Application No.41 of 2021. The properties are yet to be held to be trust properties for which inquiry is necessary under Sections 19 & 20. The Joint Charity Commissioner thus has exercised the power not vested in him. Out of three properties mentioned in the Will, one property at serial No.3 referred as Bopodi property is already disposed of during the life time of the testator and thus there is no question of passing any order in respect of that property.

4. The learned Advocate for Respondent Nos.1 to 3 vehemently opposes the prayer submitting that the registration under Section 18 is only a formality. Trust is already created in view of Section 29 of the Maharashtra Public Trust Act, 1950. He has also taken this Court through

definition as given under Section 2(13) of the Act which provides that a public trust can be expressed or constructive. He submits that as of now the property is a trust property any justifies the order. This Court finds that arguable case is made out which needs to be decided at the stage of hearing of the First Appeal In the meantime, it is necessary to protect the interest of both the parties hence following order.

ORDER

- a) Pending hearing of the First Appeal, there shall be stay to the impugned order dated 25th September, 2023, in Application No.41 of 2021 passed by the learned Joint Charity Commissioner, Pune.
- b) A statement of learned Advocate for the Appellant that he will not deal with the property or create any third party interest in respect of properties serial Nos.1 & 2 named as Cross Road property and Duncan Road property as more expressly described in the application is taken on record.

(KISHORE C. SANT, J.)