



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5299 OF 2023

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| <p>1 Laxminarayan Deosthan, Kapsi,
Regd. No. A-311 (W), Tah. Hinganghat,
District Wardha, Through (Trustee)
Secretary
Manohar Marotrao Shende,
Aged about 55 yrs, Occ. Agriculturist,
R/o Kapsi, Tahsil Hinganghat, District
Wardha</p> <p>2 Yashwant s/o Mahadeorao Vairagade,
Member of Shree Laxmi Narayan
Devasthan, Aged about 52 years,
occupation : Agriculturist,
R/o Kapsi, Taluka Hinganghat,
District Wardha</p> <p>3 Manohar s/o Marotrao Shende,
Secretary of Shree Laxmi Narayan
Devasthan,
Aged about 55 years,
Occupation : Agriculturist
R/o Kapsi, Taluka Hinganghat,
District Wardha</p> <p>4 Madhavrao S/o Shankarrao
Chandankhede,
President of Shree Laxmi Narayan
Devasthan, Aged about 52 years,
Occupation : Agriculture
R/o Sant Kabir Ward, Taluka
Hinganghat, District Wardha</p> <p>5 Mangesh s/o Marotrao Bobde,
Vide President of Shree Laxmi Narayan</p> | <p><u>PETITIONERS</u></p> |
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Devasthan, Aged about 50 years,
Occupation : Advocate, R/o Kapsi,
Taluka Hinganghat, District Wardha

6 Sheshrao s/o Namdeo Lonare,
Member of Shree Laxmi Narayan
Devasthan, Aged about 50 years,
Occupation : Agriculturist,
R/o Kapsi, Taluka Hinganghat,
District Wardha

7 Ashok Vithobaji Kalode
Member of Shree Laxmi Narayan
Devasthan, Aged about 52 years,
Occupation : Agriculturist,
R/o Rehki Taluka Seloo, District Wardha

VERSUS

Charity Commissioner, Mumbai,
3rd Floor, Charity Commissioner
Building, Dr. Annie Beasant Road,
Behind Garment House, Worli,
Mumbai - 440018

RESPONDENT

Mr. S.V. Sohoni, Advocate for petitioners
Mr. H.D. Futane, AGP for Respondent / State

CORAM : BHARAT P. DESHPANDE, J.

DATE : 14 MARCH, 2024

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard
finally at the admission stage with consent.

2. The petitioner is challenging the order dated 27/03/2023, passed by the learned District Judge in MJC No. 23/2021, thereby refusing to entertain the application filed by the petitioners for the purpose of variation in the scheme, which was framed as per the directions of the said Court in earlier proceedings.

2. Mr. Sohoni, learned counsel for the petitioners would submit that the application was moved for the purpose of variation in the scheme which is dated 11/08/2021, by making the Charity Commissioner as party respondent. He would submit that it was necessary to grant the scheme which was formulated as per the judgment and decree passed by the learned District Court, Wardha, in Civil Suit No. 4/1964, passed on 24/12/1969. He submits that an application was moved before the Charity Commissioner for filing an application before the Court which is dated 10/12/2020. He submits that the necessary details were disclosed in the application and accordingly the request was made for the purpose of requesting the Charity Commissioner to approach the Court as provided under Section 50 of the Maharashtra Public Trusts Act.

3. Mr. Sohoni, learned counsel for the petitioners would submit that since the Charity Commissioner failed to act on such a request, that the petitioners were forced to approach the Civil Court with an application for the purpose of correction, variation and against the original scheme for the said Trust.

4. The learned counsel for the petitioners would submit that even for the purpose of change report or appointment of new proceeding or management, there is no requirement for filing of the suit, but such change could be carried out by approaching the Charity Commissioner.

5. The learned Assistant Government Pleader for the respondent / State would submit that as provided under Section 50 is required to be filed.

6. There is no dispute that as per the judgment passed on 24/12/1969, the scheme was framed.

7. The application was filed for the purpose of variation, correction and amendment of the said scheme as provided under Section 50(j) of the said Act. However, second proviso to Section 50 reads thus :

“Provided further that the Charity Commissioner may, instead of instituting a suit, make an application to the Court for variation or alteration in scheme already settled”

8. The learned District Court in the impugned order and more specifically in para 11 has observed that though as per Clause 38 of the Scheme, the application for alteration can be filed by the trustees, however, the Act of 1950 contemplates otherwise.

9. The learned District Court rejected such application for variation of the scheme only on the ground that as per Section 50 of the said Act, instead of filing of application, the suit is required to be filed.

10. However, the impugned order nowhere disclosed that the learned District Judge considered the second proviso as quoted above while deciding the said application.

11. Once a discretion is given that in proviso appended to the Section it is for the concerned authority to decide whether the case put-forth by the applicant is covered under the said proviso. Since this aspect has not been considered at all, the impugned order needs interference and the matter needs to be

remanded for fresh consideration by taking into account the second proviso of Section 50 and to decide whether the application filed as per the scheme is maintainable.

12. The impugned order is accordingly quashed and set aside. The MJC No. 23/2021, is restored to the file of learned trial Court. The learned trial Court shall decide such application afresh by taking into consideration the observations made above, including second proviso to Section 50 of the Maharashtra Public Trust Act.

13. Needless to mention that this Court has not gone into the merits of the contentions raised by the petitioners for change in the scheme.

14. The learned District Judge shall independently decide it in accordance with law and by giving opportunity to the parties. Said proceedings shall be disposed of within a period of two months from the date of receipt of the copy of this order.

15. The petition is accordingly allowed in the above terms. No costs.

16. Rule is made absolute in the above terms.

17. The parties to act on the authenticated copy of this order.

(BHARAT P. DESHPANDE, J.)

MP Deshpande