

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 19178 OF 2024

Sant Bhimrao (Bhimdasbaba)

Maharaj Karande Trust, Solapur

... Petitioner

Versus

Tehtis Koti Devache Devasthan

Math Sansthan And Ors

... Respondents

Mr. Ashutosh M. Kulkarni *a/w Mr. Akshay Kulkarni for
Petitioner.*

Ms. Snehal S. Jadhav, *AGP for Respondent-State.*

CORAM : SANDEEP V. MARNE, J.

DATE : 8 APRIL 2025.

P.C. :

1) The Petition challenges order dated 16 August 2024 passed by the Deputy Charity Commissioner, Solapur Region, Solapur allowing Miscellaneous Application No. 1859 of 2023 filed by the Respondent Nos. 1 and 2 seeking permission for institution of suit against the Petitioner-Trust under provisions of Sections 50 and 51 of the Maharashtra Public Trust Act, 1950 (**the Act**).

2) I have heard Mr. Kulkarni, the learned counsel appearing for the Petitioner and have considered the submissions canvassed by him.

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3) It appears that Respondent Nos. 1 and 2 have instituted Special Civil Suit No. 99 of 2021 *inter alia* for seeking recovery of possession of the suit property from Defendant No.1 (Ambadas Maharaj Murari Karande) Respondent Nos. 1 and 2/ Plaintiffs thus believed that the land was in occupation of the first Defendant who is an individual. Defendant No.1 filed a written statement contending *inter alia* that the suit property is in possession of the Petitioner-Trust. On account of contention raised by the first Defendant about suit property being occupied by a trust, it became necessary for the Plaintiffs to implead the Petitioner-Trust to the suit and for that purpose seek permission from Deputy Charity Commissioner for institution of suit against the Petitioner-Trust. Such permission has been granted by the Deputy Charity Commissioner by order dated 16 August 2024, which is subject matter of challenge in the present Petition.

4) The first objection by Mr. Kulkarni is that it is impermissible to apply for permission under Section 51 of the Act after institution of the suit. He would submit that the statutory scheme of Sections 50 and 51 of the Act is such that what is required to be obtained is 'prior permission'. That the suit has been instituted in the year 2021 whereas the application for grant of permission of the Charity Commissioner was filed by 9 November 2023.

5) However what has happened in the present case is that Plaintiffs initially believed that the suit property is in occupation of a private individual and accordingly the suit was instituted without impleading Petitioner-Trust and without seeking prior permission of the Charity Commissioner. It is only after the written statement by first Defendant was filed that Plaintiffs realised that Petitioner-Trust

is claiming possession of the suit property. Thus, the cause for impleadment of the Petitioner-Trust to the suit arose only after written statement was filed on 29 August 2023. The Plaintiffs were desirous of impleading Petitioner-Trust, who was claiming possession of the suit property. However such impleadment could not be done without seeking prior permission of the Charity Commissioner under Sections 50 and 51 of the Act. Therefore application for such permission was filed by the Plaintiffs on 9 November 2023.

6) So far as the Petitioner-Trust is concerned, institution of the suit would be with reference to the date on which amendment in the plaint would be allowed. Thus application for seeking permission under Sections 50 and 51 of the Act has been filed under the present case before institution of the suit against the Petitioner-Trust. In that view of the matter, the objection of seeking *expost facto* permission sought to be raised by the Petitioner-Trust deserves to be repelled.

7) Mr. Kulkarni would then seek to highlight delay on the part of the Plaintiffs in moving application for seeking permission of the Charity Commissioner. He would submit that the written statement was filed on 29 August 2023 and issues were framed on 16 October 2023. He would accuse Plaintiffs of being negligent in not taking effective steps for seeking prior permission and for amendment of the plaint immediately after learning about the objection raised in Written Statement filed on 29 August 2023.

8) In my view, the application for amendment of the plaint is yet to be decided. Petitioner-Trust would be at liberty to oppose the application for amendment. As of now, what needs to be decided is only the order passed by the Deputy Charity Commissioner granting permission for impleadment of the Petitioner-Trust. I do not find any patent error in the order passed by the Deputy Charity Commissioner on 16 August 2024. The Petition is devoid of merits and it is accordingly **rejected**.

[SANDEEP V. MARNE, J.]