

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10349 OF 2024

Devidas Sitaram Chingare and ors. ... Petitioners

V/s.

Rameshwar Shankarlal Malani and ors. ... Respondents

Mr. Rameshwar Gite, Advocate for the Petitioners.

Mr. P. B. Shah with *Ms. Gunjan Shah*, Advocates for Respondents No.1,2,3,5 and 6.

Ms. Aloka A. Nadkarni, AGP for Respondents No.15 and 16/State.

CORAM : SANDEEP V. MARNE, J.

Dated : 17 February, 2025.

PC. :

1. The petition raises rather complex question of law. In an inquiry to be conducted under Section 47 of the Maharashtra Public Trust Act, 1950 (**the Act**) whether a party to the proceedings before the Charity Commissioner has right to cross-examine the rival party, who has filed the affidavit of evidence is an issue that has cropped out for consideration of this Court. Petitioners have relied upon provisions of Sub-section (2) of Section 47 of the Act under which the Charity Commissioner is required to hear the parties and also make an inquiry before passing an order appointing any person as a trustee. Reliance is also placed on provisions of Sub-section (2) of Section 47 of the Act, under which the order passed

under Section 47 of the Act is to be treated as a decree. Petitioners have also relied upon provisions of Section 74 of the Act in support of their contention that if inquiry under the Act is deemed to be a judicial inquiry. Reliance is placed on judgment of Division Bench of this Court in ***Jagjeet Singh Gurushran Singh and ors. Vs. Alka Sahani and ors.***¹, in which this Court has held that the inquiry relating to appointment or removal of trustee involving disputed question of law would necessarily entail grant of opportunity to the parties to lead evidence, if they so desire. In my view, however considering the unique facts and circumstances of this case, the issue raised need not really be decided. The Trust has admitted that there are seven posts of trustees and as of now only two persons are functioning as trustees leaving five vacancies. The factum of existence of vacancies is not really disputed. The limited remit of inquiry before Charity Commissioner under Section 47 of the Act is to examine fitness of person seeking appointment as trustees against such vacancies.

2. The Petitioners are essentially aggrieved by the allegations levelled against them both in the application under Section 47 of the Act as well in the affidavit of evidence filed by one of contesting Respondents. Those allegations relating to the management of the trust made in such affidavit that has caused anxiety to the Petitioners on account of which they sought an opportunity to cross-examine the person filing affidavit of evidence. In my view, however, proceedings under Section 47 of the Act filed in the present case do not seek removal of the existing trustees. It would be relevant to reproduce the prayers of the application in paragraph No.9 as under :-

1 2021 DGLS (Bom.)574

"९. सबब विनंती कि ---

१. अर्जदाराचा अर्ज मंजूर होऊन अर्जदार नंबर १ ते ४ व सामनेवाले नंबर २ यांची नेमणूक विश्वस्त म्हणून व्हावी.

२. तसेच, सामनेवाले नंबर १ व इतर पुजारी याची नेमणूक वंशपरंपरागत पुजारी म्हणून व्हावी.

३. इतर योग्य व न्याय ते हुकूम अर्जदाराचे लाभत व्हावेत."

3. Thus, the simple prayer in the application filed under Section 47 of the Act is for appointment of the Applicants therein and Respondent No.2 therein as trustees.

4. In that view of the matter, the limited scope of inquiry before the Charity Commissioner is to examine the fitness of the said five persons to be trustees of the Trust. The application does not seek removal of the Petitioners or the existing trustees. In that view of matter, even if any allegation is made in the application or in the affidavit of evidence against the existing trustees the same would be inconsequential. In that view of the matter, it is not really necessary for the Petitioners to cross-examine the person filing affidavit of evidence. As a matter of fact, the evidence on behalf of the contesting Respondents ought to have been restricted only to demonstrate their fitness to be appointed as trustees and it was not necessary for them to make any statement against the existing trustees.

5. The Petitioners would be in a position to contest the fitness of the contesting Respondents for being appointed as trustees of the trust. Merely because an allegation is made by the contesting Respondents against the

trustees with regard to management of the trust, the same would not *ipso-facto* create right in favour of the Petitioners to cross-examine the person filing affidavit of evidence, especially when there is no prayer in the application for removal of any trustees.

6. Therefore, without going into the issue as to whether opportunity of cross-examination can be granted in an inquiry conducted under Section 47 of the Act, I am of the view that in unique facts and circumstances of the present case, such opportunity is not really necessary. The issue sought to be raised in the present petition can be answered in an appropriate case.

7. The Writ Petition is accordingly disposed of. It is however clarified that while conducting inquiry under Section 47 of the Act, the Charity Commissioner shall not make any adverse comments on the Petitioners based on the allegations in the affidavit of evidence. The Charity Commissioner shall restrict the scope of inquiry in examining the fitness of the Applicants before it for being appointed as the trustees.

8. With the above observations, Writ Petition is disposed of.

(SANDEEP V. MARNE, J.)