

(2015) 06 BOM CK 0265

In the Bombay High Court

Case No : Writ Petition Nos. 856, 857, 863, 864, 865 and 869 of 2015

Krushna Mali Samaj Hitswanrdhak Sanstha

APPELLANT

Vs

Ashok Nathu Mali and Others

RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Maharashtra Public Trusts Act, 1950 — Section 2, 73A

Citation : (2015) 06 BOM CK 0265

Hon'ble Judges : S.P. Deshmukh, J

Bench : Single Bench

Advocate : Shailesh P. Brahme, for the Appellant; V.G. Shelke, AGP and K.C. Sant, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.P. Deshmukh, J—Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petitioner in this group of writ petitions, challenges orders dated 8th December, 2012 passed by Assistant Charity Commissioner, allowing applications filed by respondent No. 1, pursuant to section 73A of the Maharashtra Public Trusts Act, 1950.

3. Bone of contention of learned advocate Mr. Brahme, appearing for the petitioner is that respondent No. 1 cannot be said to be an "interested person", who can be said to fall under category "e" of clause 10 under section 2 comprising definitions under the Maharashtra Public Trusts Act, 1950. Respondent No. 1 is neither a trustee, nor is he a member of the trust. He further tries to find flaw in observations appearing in the order impugned that the object of the trust is benefit and welfare of Mali community. Learned advocate further refers to dabbling activities of respondent No. 1 in the affairs of the trust. He, as such, submits that for all aforesaid reasons, inclusion of respondent No. 1 in the proceedings pending before Assistant Charity

Commissioner would be improper and is not at all desirable.

4. Mr. Brahme, learned advocate for the petitioner places reliance on a decision of learned single judge of this court in writ petitions bearing No. 832 of 2015 and 933 of 2015 decided on 2nd February, 2015. Factual position in said matter appears to be that two trusts were at loggerheads and were having clash of interest. It was not a case wherein the petitioners could be said to be either trustees or beneficiaries of the trust about which the proceedings were going on. Facts of said case are wide apart from the ones involved in present matters and as such, the judgment being relied on may not carry case forward for the petitioner.

5. Mr. Sant, learned advocate for respondent No. 1, on the other hand, submits that it is an indisputable position that respondent No. 1 belongs to Mali community and title of the trust itself suggests that it is meant for benefit of the people belonging to said community. Learned advocate further points out that the fact that respondent No. 1 is having interest in affairs of the trust is evident from the averments as are appearing in the "say" of the petitioner filed opposing applications pursuant to section 73A of the Maharashtra Public Trusts Act. It is further being submitted that discretion has been vested in the authority and unless the same is exercised illegally and without following judicial principles, the same is not amenable to be interfered with.

6. Mr. Sant, places reliance on Digambar Pralhad Jot and Others Vs. Satyanarayan Biharilal Zunzunwala and Others, AIR 1978 Bom 196 , a decision rendered by a division bench of this court with reference to the phrase "person having interest" and submits that the words are intended to be enumerative and not exhaustive and according to him in said citation it has been considered that once the authority has considered that certain people are having interest in the trust, said finding being of fact, is not liable to be interfered with by this court in its extra ordinary jurisdiction.

7. Looking at aforesaid, the order being passed after taking into account rival submissions and finding that respondent No. 1 is having interest in the trust, and that his presence may assist the inquiry officer to arrive at a proper decision, I am not inclined to exercise discretionary powers in favour of the petitioner. Writ petitions, as such, are dismissed. Rule stands discharged with no order as to costs.