
(2017) 04 BOM CK 0069
In the Bombay High Court
Case No : 2324 of 2017

Shri Satish Vasant Salpekar, & Anr.

APPELLANT

Vs

Ashwin Ghatate, & Anr.

RESPONDENT

Date of Decision : 27-04-2017

Acts Referred:

[Bombay Public Trusts Act, 1950](#), [Section 47](#)/
[Section 2\(18\)](#), [Section 2\(1\)\(e\)](#), [Section 73A](#)/
[Section 41A](#) - Power of Court to appoint new

Citation : (2017) 04 BOM CK 0069

Hon'ble Judges : R. K. Deshpande

Bench : SINGLE BENCH

Advocate : N.A.Gaikwad, Alok Daga, U.A.Gosawi, M.M.Dandekar

Final Decision : Dismissed

Judgement

1. Rule made returnable forthwith. Heard learned counsels appearing for the parties finally.

2. In all these petitions, the order dated 04.03.2017 passed by the learned Assistant Charity Commissioner, Nagpur, in different change reports, rejecting the applications filed by the petitioners under Section 73A of the Maharashtra Public Trusts Act, for being joined as intervenor, is under challenge. It has been held relying upon the decision of this Court in Chetan Mehta vrs. State of Maharashtra and others, reported in 2008 (6) All MR189, that the intervenors have not demonstrated as to how their impleadment would assist the authority in determining the present change report. It further holds that merely because the intervenors are the trustees as on the date, it would be of no use to assist the enquiry on the change reports which were filed long back.

3. The learned counsels appearing for the petitioners in all these petitions, supported by Shri U.A.Gosawi, the learned counsel appearing for respondent No.1, urged that all the petitioners in the petitions were appointed as trustees of

the trust in question by an order dated 19.05.2016 passed by the learned Joint Charity Commissioner at Mumbai, in exercise of his powers under Section 47 r/w Section 41A of the said Act. It is not in dispute that all the change reports except one, to which the petitioners are the parties, were filed prior to 2012. It is urged that the petitioners are covered by the definition of "persons having interest" in Section 2(1)(e) of the said Act read with Section 2(18) and therefore, the application for intervention should have been allowed by the learned Assistant Charity Commissioner. The reliance is also placed upon the common decision of this Court in the case of Mr. Harshal Uddhav Aarvikar vrs. Shri Jagjeet Singh Gurusharan Singh and another, along with connected matters, decided on 07.04.2017. He urged that the provisions of Section 73A of the said Act is wide enough to include even the persons who were not the members of the trust on the date of filing of the change report.

4. In the decision of this Court in Harshal's case, cited supra, the petitioners were found to be enrolled as members of the trust on 17.02.2009 and the change report was filed on 20.02.2009. Thus, the undisputed position was that prior to filing of change report, the petitioners were actually enrolled as the members. They were, therefore, held to be the persons having interest in the trust. The observations of this Court that the provision of Section 73A of the said Act is wide enough to include even the persons who were not the members of the trust on the date of filing of the change report is, therefore, surplusage and does not constitute a ratio of the decision. The said decision does not, therefore, help the petitioners in these petitions.

5. Merely because all the petitioners were appointed as trustees by the subsequent order dated 19.05.2016 of the learned Joint Charity Commissioner, passed in exercise of powers under Section 47 read with Section 41A of the said Act, would not make them as the persons having interest in the trust for the purpose of the change reports which were filed on 20.02.2009 i.e. prior to they becoming the trustees of the trust. The contention to that effect is, therefore, rejected.

6. In the result, there is no substance in the petition. All the petitions are dismissed.