

BEFORE THE HON'BLE JOINT CHARITY COMMISSIONER,
MAHARASHTRA STATE, MUMBAI REGION

APPLICATION NO.5/2012

YOGESH THAKKAR AND ORS

...APPLICANTS

नाम Siddharth Dave

नककल तयार दिनांक 4.10.18

नककल दिली तो दिनांक 22.10.18

रककम रुपये 54/- रु.

1590 कलम/नियम 41E

गोपनी मिळार

खरी नककल म्हणून प्रमाणित

22.10.18

प्रमाणित जामुक्त महाराष्ट्र राज्य बाचे

पालय मुंबई

V

MUKESH SARDA AND ORS

...RESPONDENTS

APPLICATION ON BEHALF OF MR. MICHAEL O' BYRNE ALIAS
SWAMI JAYESH, OPPONENT NO. 5 HEREIN, IS AS UNDER:

- 1) It is submitted that the matter is fixed on today's board. The Opponent no.5 is appearing in the present matter today by filing his vakalatnama. The Opponent no.5 is also filing an application for setting aside order of proceeding ex parte.
- 2) It is submitted that this Opponent has been unnecessarily dragged in the matter and it seems that the Applicants are trying to obtain orders from this Hon'ble Authority, behind the back of the Opponent. It is submitted that after coming to know about the present application from Opponent no.7 Mr. Darcy O'Byrne, the Opponent has realised that he has been made party to the present proceedings.
- 3) The Opponent submits that, the applicants without any rhyme or reason are unnecessarily dragging this opponent as well as others in respect of the Trust affairs. This opponent is neither a trustee nor managing the affairs of the trust. The scope of Section 41E of BPT Act is limited. Relevant portion of Section 41E provides as under:

41E. Power to Act for protection of Charities :

Order Side
to Jay

26/11/18

26/11/18

Where it is brought to the notice of the Charity Commissioner either by the Deputy or Assistant Charity Commissioner through his report or by an application by at least two persons having interest supported by affidavit, (a) that any trust property is in danger of being wasted, damaged or improperly alienated by any trustee or any other person, or (b) that the trustee or such person threatens, or intends to remove or dispose of that property, the Charity Commissioner may by order grant a temporary injunction or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of such property, on such terms as to the duration of injunction, keeping an account, giving security, production of the property or otherwise as he thinks fit.

From the above reading of section 41E it provides that there must certain act of wastage, damage or alienation of property. However in the present matter in hand on the plain reading of the application no pleading or relief pertaining to the wastage, damage or alienation of the property at the hands of the present opponent can be seen.

- 4) It is further submitted that no details as to how the present opponent can be said to a party to the present litigation have been spelt out. The present opponent has not been involved in the management of the Trust or its properties and under the limited scope of section 41E no reliefs can be sought against this opponent, as the allegations in the application are vague and very general in character. The opponent is thus preferring the application for deleting the opponent from the present proceedings.

MUMBAI

Dt. 26/12/2018

Advocate for Opponent no.5

Opponent no.5

अखरी नुककल म्हणून प्रमाणित
अधीक्षक
22/12/2018
माहिती आयुक्त महाराष्ट्र राज्य रॉचे कार्यालय. मुंबई

BEFORE THE JOINT CHARITY COMMISSIONER-I,
MAHARASHTRA STATE, MUMBAI.
(Presided by Ashutosh N.Karmarkar)

Application No.5/2012

(Under Section 41E of the Maharashtra Public Trusts Act, 1950)

In the matter of -
 Osho International Foundation
 P.T.R. No.F-14570(M) *A*

ORDER BELOW EX.59

1 According to Respondent No.5 Mr.Michael O'Byrne alias Swami Jayesh he has been unnecessarily dragged in the matter. Applicants are trying to obtain order behind their back. He received information from Respondent Mr.Darcy O'Byrne about this proceeding. This respondent is not a trustee nor managing the affairs of the Trust. In order to get relief under Section 41E there must be certain act of wastage, damage or alienation of the Trust property. There is no pleading pertaining to wastage, damage or alienation of the Trust property by this respondent. Respondent has not been involved in management of the Trust or its properties. So, he has prayed for deletion of his name.

According to the applicant, this respondent is a foreign national who is illegally working and interfering in the management of the Trust and its offices as well as funds and assets. This is the tactics by this respondent to delay the proceeding. This respondent is



A
 4, 8-18

accused in crime in respect of which criminal Writ Petition is pending. According to the applicant, this respondent inspite of having knowledge of this application and other proceedings preferred not to appear. The applicant is having sufficient and credible evidences against this respondent for alleged siphoning of the valuable securities, properties and articles of the Trust. This respondent is continuously benefited by siphoning funds and properties of the Trust and is a necessary party to the proceeding. This respondent is having direct involvement in the activities of trust and applicant will point out at the time of hearing. The serious investigations for forging the Will of Osho as well as violation of Foreign Exchange Management Act are going on against the respondent.

2 I have heard both the sides. I have also perused written arguments (Exs.71 and 72). According to this respondent, there is no pleading showing involvement of respondent in any Act as contemplated under Section 41E. Allegations against respondent are vague. In the written arguments, it is contended that original applicants are trying to divert focus of the matter by referring proceedings before the Hon'ble High Court. The proceedings before the Hon'ble High Court are no way concerned with this matter. Writ Petition No.2150/16 is pertaining to F.I.R which is filed regarding "Will" of Osho.

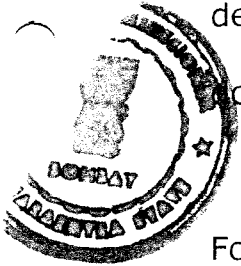


It is contended by the respondent that another respondent No.7 has been deleted. Ld. Advocate Shri Chakranarayan has stated that there is no reference of alleged Will of Osho in the main application and authority cannot travel beyond the pleadings. He has referred citation **Kalyan Singh Chouhan Vs. C.P.Joshi, 2011 DGLS(SC) 70 (Supreme Court).**

3 Original applicant has stated that the facts pertaining to deletion of respondent No.7 are different. It is submitted that the documents are filed at Ex.33 to support the contention in application.

According to applicant no.1, he was trustee of Sambodhi Foundation Trust which was merged in Osho International Foundation Trust. It is contended that applicants are followers of Osho alias Bhagwan Shri Rajnish. Applicant No.1 was associated with this Trust. In support of this contention these applicants have filed their affidavits (Exs.3 & 4).

4 The applicant has particularly come with a case that there is no pleading pertaining to any wastage, damage or alienation of the property at the hands of this respondent. The applicants have specifically alleged in para 14 of the application that previously books in respect of teachings of Shri Osho were published by Osho Media International earlier known as Sadhna Foundation. But, during the course of time, the respondents have changed the publisher to Osho Multimedia and Resorts Pvt. Ltd. It is specifically alleged that



AN
11.8.18

respondent Nos. 1 to 3 happened to be the Directors of the said Company who are directly making wrongful gain.

It is further alleged in the application that prior to Shri Osho's demise, he had constituted group of 21 disciples. That inner circle was constituted to manage the day to day activities of the Ashram. It is further alleged that said inner circles dissolved arbitrarily and the activities of the Trust are influenced by this applicant. They are interested in the affairs of the Trust. It is alleged that respondents have used good offices of Shri Osho's Institution for making commercial gain. Another instance is given in application that respondents have engaged commercial cleaning services of contractors namely "Sodexo" to whom heavy payments are made. The work which was carried out by the disciples free of cost is now offered to M/s.Sodexo at an exorbitant price. The applicants have also contended in para 34 of the application about interference of this applicant in the affairs of this Trust. Another allegation is also made in the application about formation of the Trust "Osho International Foundation" in Switzerland of which respondent Michael O'Byrne is the President and respondent No.1 is also one of the trustees of the said trust. This particular creation of the Trust resulted in depriving the Trust of its lawful return and income. So, it is difficult to accept the contention in this application of the respondent about absence of any pleading pertaining to wastage, damage or wrongful alienation of



the property. The allegations in the application can be tested at the time of final hearing. Even if, this respondent is not a trustee, still provision of Section 41E empowers this authority to pass order of temporary injunction, if any of preventing, wasting or damaging of the property against the trustee or any other person who is engaged in the alleged act.

5 The respondent (original applicant) has submitted that F.I.R is already filed against this applicant(original respondent). Ld. Advocate for the original respondent has submitted that there is no such pleading in the main application. The Authority cannot travel behind the pleading. For that purpose he has relied in case of **Kalyan Singh Chouhan Vs. C.P.Joshi, 2011 DGLS(SC) 70 (Supreme Court)**. Copy of F.I.R is on record which is against Mr.George Meridith alias Swami Amritho and others for the offences under Section 465, 467, 471, 120(B) of I.P.C. There is allegation in it about cheating by presenting false will of Osho for their benefit and to use income from various branches of Osho trust, intellectual property etc. There is no direct pleading about F.I.R in the main application. But, there is allegation about change of publisher in respect of books of Shri Osho appears to be pertaining to intellectual property. So, for the reasons stated above it is not proper to delete this respondent from the proceedings. It is also submitted on behalf of respondent that name



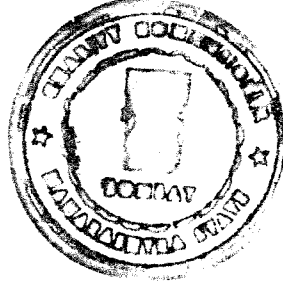
4, 3-15

of one of the respondents is deleted. Merely, on that ground this application cannot be allowed. Hence order

ORDER

Application is rejected.

Mumbai
Dated: 4.08.2018



Ashutosh N. Karmarkar 4.8.18
(Ashutosh N. Karmarkar)
Joint Charity Commissioner-I,
Maharashtra State, Mumbai.

खरी नकल म्हणून प्रमाणित
अधीक्षक
प्रमादीय आयुक्त महाराष्ट्र राज्य यॉंचे कार्यालय, मुंबई
22.1.18 22/9/19