

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO.5001 OF 2023

Surajsingh s/o Tuljaramsingh Mala,
Age : 84 years, Occu. REtired and Treasurer,
R/o.: Badi Madi,
Gadipura, Nanded APPLICANT

VERSUS

1. Dr. Ramratansingh Umravsingh Bisan
2. Ladoosing Harsing Mahajan
3. Banarasidas Ranjilal Agrawal
4. Sachidanand s/o Lallan Mishra
5. Narendrapal Jaswantlal Barara
6. Dadarao s/o Babarao Dhone (died)
7. Nandkishor Govind Narayan Somani
8. Rameshsinh Mannasinh Tehra (died)
9. Surajprasad s/o Kashiprasad Yadav ... RESPONDENTS

WITH

CIVIL APPLICATION NO.5002 OF 2023

Surajsingh s/o Tuljaramsingh Mala,
Age : 84 years, Occu. REtired and Treasurer,
R/o.: Badi Madi,
Gadipura, Nanded APPLICANT

VERSUS

1. The Joint Charity Commissioner,
Aurangabad Division, Aurangabad
2. The Assistant Charity Commissioner,
Nanded Tq. & Dist. Nanded
3. Sachidanand s/o Lallan Mishra
4. Dr. Ramratanshingh Umravsing Bisan
5. Ladoosing Harising Mahajan
6. Narendrapal Jaswantlal Barara
7. Dadarao s/o Babarao Dhone
8. Banarsidas Ramjilal Agrawal

9. Nandkishor Govind Narayan Somani
10. Rameshsinh Mannasinh Tehra (dead)
11. Surajprasad s/o Kashiprasad Yadav ... RESPONDENTS

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Mr. R. N. Dhorde, Senior counsel i/b Mr. B. R. Warma, Advocate for the applicant.

Mr. S. P. Tiwari, AGP for Respondent-State

Mr. S. V. Kurundkar, Advocate for respondent Nos.1 to 3 in C.A. No.5001 of 2023 and for respondent Nos.1, 4, 5 and 8 in C.A. No.5002 of 2023.

Mr. Hemant Surve, Advocate for respondent No.4 in C.A. No.5001 of 2023 and for respondent No.3 in C.A. No.5002 of 2023.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 18/08/2023.

P. C. :

1. The applicant, who is original respondent No.1 in both these appeals namely F.A. No. 674 of 2023 and F. A. No. 618 of 2023, has preferred these applications for modification of order dated 08/03/2023 in C.A. No. 2000 of 2023 and C.A. No.1763 of 2023 filed in the aforesaid respective appeals by the present respondents for stay of judgment dated 09/12/2022 passed by the learned Joint Charity Commissioner, Aurangabad in Application No.7 of 2014.

2. According to the applicant, the learned Joint Charity Commissioner, Aurangabad under judgment dated 09/12/2022 in Application No.7 of 2014 has suspended the present respondents from trusteeship for 5 years or till appointment of new trustees, whichever occurs earlier and meanwhile the present applicant and concerned Inspector of Charity Office, Nanded having control over the Trust to look after the management of Trust as per provisions of

scheme and take necessary steps for recording name of Trust in revenue record for the agricultural land, which is the property of Trust.

3. The applicant has contended that this court vide order dated 08/02/2023 ignored vital aspect of the matter. The applicant has raised following questions of law :

- (xiv) *Whether the Hon'ble High Court has failed to consider the fact that by the order grant of stay to the order dated 09/12/2022, the pending First Appeal by the Respondents virtually stands allowed?*
- (xv) *Whether the Hon'ble High Court was justified in granting stay in the nature of status quo ante giving rise to multiplicity of the proceedings and creating chaos?*
- (xvi) *Whether the Hon'ble High Court was justified in granting stay particularly, when change report under Section 22 of the MPT Act is pending consideration before the Joint C.C. to take entry of new Mahant in Schedule-1 and where the respondents have ample opportunity to resist and contest the said proceedings?*
- (xvii) *Whether the Hon'ble High Court was justified in brushing aside the consideration of clause 5(3) of the Scheme with regard to the appointment of the Mahant in emergency situation and particularly to maintain the sanctity of the Hindu temple wherein religious belief of thousands of devotees of the vicinity is involved?*
- (xviii) *Whether the Hon'ble High Court was justified in denying consideration of the requirement of appointing new Mahant in emergent situation as temple and Lord Balaji cannot be left without offering mandatory Puja, Bhog and other religious rites on regular basis?*

- (xix) *Whether the Hon'ble High Court was justified in not looking into the provisions of Scheme particularly clause no.10(3)(12) of the scheme vide which all the reins of the financial transactions and other affairs of the trust were kept in the hands and control of the Respondent No.1?*
- (xx) *Whether the Hon'ble High Court was justified in not considering the fact that the Inspector of Charity office was informed of every step being taken, but instead of participating in the proceedings the Inspector chose not to participate on the ground of there being no official communication?*
- (xxi) *Whether the Hon'ble High Court has erred in considering the fact that the prayer for grant of stay to the order dt. 09/12/2022 could not have been considered based on the subsequent events, as the same were pursuant to implementation of order dt. 09/12/2022?*
- (xxii) *Whether the Hon'ble High Court has erred in considering the fact that U/s. 41 D there is power to administer the trust as per the scheme conferred upon the remaining trustees?*
- (xxiii) *Whether the Hon'ble High Court has failed to consider that the appointment of new Mahant was unavoidable as the religious duties towards deity and the administration was of trust was necessary after the suspension of trustees?*
- (xxiv) *Whether the Hon'ble High Court was justified in recording self-contradictory findings once the Hon'ble High Court recorded necessity of appointment of new Mahant in paragraph 14 of the order under Challenge?*
- (xxv) *Whether the order of the Hon'ble High Court has not considered material aspects of the matter has granted stay to the suspension of respondents without rendering any finding on merit?*

(xxvi) Whether the Hon'ble High Court has completely overlooked the consideration that the respondents though served and present before Joint have chosen to not file their say or lead any evidence?

Further, the applicant has raised similar grounds as per the aforesaid aspects.

4. It is significant to note that some of the respondents are no more and one respondent Dadarao has resigned from the trusteeship. The remaining respondents vide their affidavit in reply strongly opposed the applications for modification by contending that this court has rightly stayed the said impugned order of the learned Joint Charity Commissioner, Aurangabad dated 09/12/2022 against which the present appeals are filed. According to them, the learned Joint Charity Commissioner, Aurangabad has already absolved the present respondents from respective alleged charges levelled against them by the present applicant. They contended that only the charge under point no.4 has been established under the judgment of the learned Joint Charity Commissioner, Aurangabad, in respect of which the respondents are not concerned but the applicant was responsible for the same. According to the respondents, even the Hon'ble Apex Court has not interfered with the order of this court dated 08/03/2023 but generally granted leave to the applicant for filing modification of the said order without specifying any important aspect.

5. Heard rival submissions. Also perused the entire material on record.

6. Admittedly vide order dated 08/03/2023 passed in the concerned civil applications filed by the present respondents, this court has stayed the impugned order dated 09/12/2022 passed by the learned Joint Charity Commissioner, Aurangabad, whereby the present respondents were suspended for 5 years or till appointment of new trustees, whichever occurs earlier including the interim arrangement whereby the present applicant alongwith the concerned Inspector of Charity Office, Nanded, were directed to look after the management of the trust as per the provisions of the scheme. Further, it is not in dispute that the said order dated 08/03/2023 was challenged by the present applicant before the Hon'ble Apex Court and the Hon'ble Apex Court in SLP (C) Nos.5819-5820 of 2023 has passed following order :

"Having heard learned senior counsel for the petitioner and the learned counsel for the contesting respondent(s) in caveat, though we are not inclined to consider interference in the interim order dated 08/03/2023 passed by the High Court, but taking note of the totality of circumstances, deem it appropriate to leave it open for the petitioner to move appropriate application before the High Court for modification of the order dated 08/03/2023 or for any amendment or alteration therein. We also leave it open for the contesting parties to put forth their view point before the High Court and for the High Court to take a decision, if at all any modification / alteration in the arrangement envisaged by the impugned interim order dated 08.03.2023 is to be provided.

We have been informed with reference to the order dated 10/03/2023 passed by the High

Court (Annex. P-15) that as on date, operation of the order dated 08/03/20223 remains stayed and consequently, the petitioner of SLP (C) Nos. 5819-5820 of 2023 is managing the Trust in question. Obviously, he would be carrying out such management in consultation with the Inspector of Charity, as required by the order dated 09/12/2022.

Having regard to the circumstances, we deem it appropriate to continue with such a position as has hitherto continued until the first date of appearance of the parties.

The parties through their respective counsel shall stand at notice to appear before the High Court on 17/04/2023.

The special leave petitions and pending applications are disposed of accordingly."

7. Though the applicant has preferred modification of the order dated 08/03/2023 passed by this court on the basis of aspects and grounds raised in the applications, but it is extremely important to note that the Hon'ble Apex Court has recorded the observation that they were not inclined to consider the interference in the interim order dated 08/03/2023 passed by this court. Only the leave is granted for the applicant to move an appropriate application before this court for modification of the same by taking note of totality circumstances.

8. It is significant to note that the main grounds on which the modification of earlier order of this court dated 08/03/2023 is sought, are that this court by staying the order dated 09/12/2022

granted final relief at interim stage and restored the status quo ante that this court denied an opportunity to the new Mahant and the present applicant to look after daily affairs including mandatory Pooja, Bhog and other religious rites on regular basis and that this court wrongly interpreted the provisions of scheme particularly clause 5(3), clause 13 and clause 15. It is significant to note that the original Application No.7 of 2014 was filed by the present applicant before the learned Joint Charity Commissioner, Aurangabad by making serious allegations against the respondents of malpractices including fraudulent transfer of trust properties by respondent No.4 Sachidanand Lallan Mishra in his name. On the allegations of the present applicant, the learned Joint Charity Commissioner, Aurangabad had framed in all six points and recorded his findings thereon, as follows :

	POINTS	FINDINGS
1.	Whether it is proved that Respondents have made persistent default in the submission of accounts report or return ?	No.
2.	Whether it is proved that Respondents have not performed the festival and ceremonies as per the aims and objects of the Trust and failed to conduct elections as per the Scheme of the Trust and thereby continuously neglected duty and committed malfeasance, misfeasance and breach of Trust?	No.
3.	Whether it is proved that Respondents have transferred the Trust property bearing Gut No. 138, admeasuring 08 Hectors 62 Acres, Gut No. 139, admeasuring 08 Hectors and 21 Ares, situated at Pawadewadi, Tq. Nanded, District Nanded in favour of Respondent No.1 Sachidanand Mishra without permission of Charity Commissioner	No.

	for their personal wrongful gain and thereby misappropriated or dealt improperly with the properties of the Trust?	
4.	Whether it is proved that Respondents have failed to deposit monthly / yearly rent received from different tenants possessing the house property of Trust in the bank Account and thereby misappropriated or dealt improperly with the properties of the Trust?	Yes.
5.	Whether it is proved that Respondents have failed to maintain account of proceeds received from agricultural lands of Trust property in Account Books and thereby they have misappropriated or dealt improperly with the properties of the Trust of which they are the Trustees?	No.
6.	Whether it is proved that Respondent No.1 has withdrawn the amount of Trust from the Bank Account without any competence and causing loss to the Trust and illegally making control over the Trust property and Temple on forged and fabricated documents and Will of Mahant Keshavachariya Guru and thereby he has misappropriated or dealt improperly with the properties of the Trust of which he is the Trustee?	No.
7.	What order?	As per final order.

9. On bare perusal of the points framed by the learned Joint Charity Commissioner, Aurangabad it appears that the the learned Joint Charity Commissioner, Aurangabad has dealt with all the allegations levelled by the present applicant against the present respondents as regards the malpractices including allegations of misappropriation of trust property and preparing forged and fabricated documents for illegal control over the trust property.

However, it is most significant to note that out of the aforesaid points, only point No.4 appears to be established in the judgment of the learned Joint Charity Commissioner, Aurangabad against the respondents, which is in respect of non-deposit of monthly or yearly rent received from different tenants from the house property of the trust. This court in order dated 08/03/2023, has already dealt with the said aspect by observing that the present applicant was in fact treasurer of the trust and he was also equally responsible for such non-deposit of the rent as he was aware of the same. Further, it is also observed in the aforesaid order by this court that despite the interim arrangement under order dated 09/12/2022 the applicant, contrary to the scheme of the trust, illegally appointed some trustees without proper notice. He was supposed to act and to look after the management of the trust alongwith the concerned Inspector of Charity Office, Nanded, but the applicant without presence of the said Inspector, appointed the trustees and flouted the order of the learned Joint Charity Commissioner, Aurangabad.

10. Though in these applications he has levelled so many charges against the present respondents, specially against respondent No.4 Sachidanand Lallan Mishra, but it is equally important to note that the learned Joint Charity Commissioner, Aurangabad did not find any substance in those charges while passing order dated 09/12/2022. Thus, it appears that the present applicant acted contrary to the order dated 09/12/2022 and without any consultation with Inspector of Charity Office, Nanded, appointed Mahant without issuing any proper notice which was contrary to

the scheme of the trust. Thus, it appears that when the learned Joint Charity Commissioner, Aurangabad had already absolved the respondents from most of the charges levelled by the applicant and held them responsible only in respect of one charge of non-deposit of rent of the trust property in the account of the trust for which the applicant being a treasurer was also responsible, there was need of granting stay to the impugned order dated 09/12/2022 in these appeals. It is also important to note that the applicant has also filed separate appeal bearing First Appeal (Stamp) No.5320 of 2023 for wrongful absolving of the present respondents from the charges as described in point Nos.1 to 3, 5 & 6 but never cared to proceed for delay condonation.

11. The learned senior counsel Mr. R. N. Dhorde for the applicant expressed his concern as to how the daily affairs of the trust could be managed due to stay granted by this court under order dated 08/03/2023. However, in that case, the situation prior to the passing of impugned order dated 09/12/2022 would prevail. Therefore, considering all these aspects it appears that the applicant not only flouted the direction of the Joint Charity Commissioner, Aurangabad under order dated 09/12/2022 by acting contrary to the scheme of the trust but also kept the concerned Inspector of Charity Office, Nanded in dark while actually appointing Mahant Keshavachariya. Subsequent intimation of such appointment to the said Inspector also appears an after thought. Further, for grant of stay, only *prima facie* case needs to be seen alongwith the balance of convenience and when most of the serious charges against the present respondents stood

unestablished in the impugned order dated 09/12/2022 and the present applicant being acted contrary to the scheme and direction in the stay order, prohibition order like order dated 08/03/2023 of this court was absolute necessary considering the overall circumstances. The learned Hon'ble Apex Court has also not interfered with the aforesaid order dated 08/03/2023. Further, by considering the submissions, it appears that no proper grounds are brought before this court for any modification as sought by the applicant in these applications. In view of the same, both the civil applications stand disposed of.

(SANDIPKUMAR C. MORE, J.)

12. At this stage, learned counsel for the applicant in both these applications, prayed for continuation of interim relief, which was originally granted by the Hon'ble Apex Court. The learned counsel for the respondents strongly opposed the submission for continuation of interim relief since everything has been decided on merits. However, considering the fact that the interim relief which was granted by the Hon'ble Apex Court, was continued during pendency of these applications, the same is continued only till 01/09/2023.

(SANDIPKUMAR C. MORE, J.)