



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO. 9747 OF 2026

Shaikh Amin Hussain President And Others

VERSUS

Ghanshyam Prataprao Shelar

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Mr. Shaikh Mujtaba Gulam Mustafa, Advocate for the Petitioners.

Mr. M. D. Deshmukh h/f. Mr. U. L. Momale, Advocate for the Respondent.

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CORAM : KISHORE C. SANT &
JITENDRA JAIN, JJ.

DATE : 4th SEPTEMBER, 2026

PER COURT :

1. Heard learned Advocates for the parties.
2. By consent, petition is taken up for final disposal at the stage of admission.
3. The sole respondent approached the Deputy Charity Commissioner, Ahilyanagar by filing an application under Section 41A of the Maharashtra Public Trusts Act, 1950. The said application came to be allowed. The learned Deputy Charity Commissioner directed the Trustees i.e. the petitioners of Shaikh Mohammad Baba Dargah Trust, registered as a Public Trust bearing No. E-71 to pass a resolution for de-registering the Trust from the Waqf Board, as the said Trust is also registered as a Waqf. The petitioners-trustees,

therefore, being aggrieved by the said order dated 15.05.2026 have approached this Court.

4. Mr. Mustafa, learned advocate for the petitioners, vehemently argues that an application was essentially under Section 41A of the Maharashtra Public Trusts Act, 1950, only deals with the powers of the Deputy Charity Commissioner to pass appropriate orders for proper administration of the Trust. In the present case, the prayer itself would show that it was not for proper administration of the Trust, but was for directing the petitioners to get the Trust de-registered as a Waqf by making necessary application before the Waqf Board under the Waqf Act, 1995. He further submits that, if at all the said entity is to be de-registered as a Waqf, there are remedies provided under the Waqf Act, 1995. The authorities under the Maharashtra Public Trusts Act would have no jurisdiction to deal with that aspect. He submits that no case was made out to demonstrate that the Trust is not being properly administered making it necessary to invoke the powers under Section 41A. He, therefore, prays for quashing and setting aside the impugned order.

5. Mr. Deshmukh, learned advocate for the respondent, vehemently opposes the petition. He submits that infact in the year 2008, the petitioners themselves had made an application to the Collector for de-registering the said entity as a Waqf. Now they

cannot turn around and say that the Deputy Charity Commissioner's order is without jurisdiction. He submits that though the Waqf is registered with the Waqf Board, the authority is still exercised by the authorities under the Maharashtra Public Trusts Act. The accounts, audit reports etc. are submitted with the Deputy Charity Commissioner. When, for all the purposes, the entity is a Trust, it is creating problems as the said is also registered under the Waqf Act. Both these registrations cannot go together. He, therefore, submits that Deputy Charity Commissioner has rightly observed, if the situation continues, there would be mismanagement and there is apprehension of financial irregularities which would affect the working of the Trust. He submits that it is rightly observed that the registration with the Waqf Board is only ad-hoc and he, therefore, defended the order.

6. Section 41A of the Maharashtra Public Trusts Act, 1950 reads as under :-

41A. Power of Commissioner to issue directions for proper administration of the trust.—

“(1) Subject to the provisions of this Act, the Charity Commissioner may from time to time issue directions to any trustee of a public trust or any person connected therewith, to ensure that the trust is properly administered, and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust; and the Charity Commissioner may also give directions to the trustees or such person that if he finds any property of the trust is in danger of being wasted, damaged, alienated or

wrongfully sold, removed or disposed of.

(2) It shall be the duty of every trustee or of such person to comply with the directions issued under sub-section (1)."

7. On a reading of the section itself, it is seen that the power of Charity Commissioner is to issue directions to the trustees only in cases where he finds that any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of. In the present case, we hardly find any case made out falling under any of the above categories. The Trust is already registered as a Trust since 1953. Merely because it is also registered under the Waqf Act, will not take away the character of the Trust. In any case, when the Deputy Charity Commissioner exercises jurisdiction, he has to first form an opinion that a case is made out under Section 41A for issuance of directions. For that purpose, he has to first come to the conclusion that directions are necessary to save the property of the Trust from danger, being wasted, damaged, alienated or wrongfully sold, etc.

8. In the present case, the prayer itself is for a direction to the petitioners to get the Waqf de-registered from the Waqf Board. We hardly find that the said prayer would fall under Section 41A. As rightly pointed out by the learned advocate for the petitioners, there are remedies provided under the Waqf Act. It is open for the respondent to resort to such remedies, if at all advised.

9. With this, this Court finds that the petition deserves to be allowed. The impugned order dated 15.05.2026 stands quashed and set aside. The petition thus stands allowed and disposed off.

10. The observations in this order are strictly for the purpose of deciding this writ petition and shall not be considered as observations made on merits or otherwise.

11. At this stage, learned advocate for the respondent prays for stay of the effect of this order for a period of three weeks from today. The effect and operation of this order shall not come into effect for a period of three weeks from today.

(JITENDRA JAIN, J.)

(KISHORE C. SANT, J.)