FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Notes, Office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

FIRST APPEAL NO. 1245 OF 2012

NARAYAN PRASAD SETHI AND ANR

VERSUS

CHOTELAL PURANSING ARORA AND ORS

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Advocate for Appellants : Mr. Bajaj Anil S.
Advocate for Respondent No.2: Mr. S. C. Boara.
Advocate for Respondent No.4: Mr. S. S. Kazi.

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CORAM: T. V. NALAWADE, J.
DATED: 21st JANUARY, 2016.

PER COURT:

1. The appeal is filed to challenge the order made by Joint Charity Commissioner, Aurangabad in Inquiry No.3 of 2009 of a proceeding which was filed under section 47 of Bombay Public Trust Act, 1950. Both the sides are heard.

2. Some persons interested in the trust by name Panchayati Sangat Khatriyan Shri Guru Maharaj Trust, Dhavani Mohalla had filed a proceeding under section 47

of the Act. The object of the trust is to promote worship of Shri Garanthsahab. It was contended that on the date of the application, there were no trustees working and so it had become necessary to use the powers given to the Joint Charity Commissioner under the Act. It was contended that the Respondents like Narayan Sethi and Brij Kapoor were managing the affairs but they were not trustees. It was contended that the accounts of the trust were not properly maintained and these persons were not calling the meetings of the members and they were not taking steps for election of new trustees. It was their case tht the scheme was settled for the trust in the year 1982 and the first elected trustees had taken over the management in the year 1983. it is contended that no elections were held till the year 2000 and when the elections were held, the respondents of the proceeding objected to it and the change report was rejected.

3. It is the case of the persons who had applied before the Joint Charity Commissioner that by order dated 15th February, 2006 the Deputy Charity Commissioner, Aurangabad directed to delete the names of the trustees from Schedule I in view of the aforesaid circumstances. it is

contended that even after such order, Respondent No.2 who was in the past a trustee continued to rule and Respondent No.1 who is not even a trustee is operating the bank account and he is also ruling the trust. it is contended that their actions are not in the interest of the trust and they are not maintaining account in respect of the rent collected, F.Ds. of the trust etc.

4. This proceeding was opposed by the Respondent Nos.1 and 2. After giving opportunity to both the sides the Joint Charity Commissioner appointed *Fit Person,* one Advocate for the period of three months. He was expected to make new members as per the scheme and then hold the elections to see that the elected trustees take control of the trust. He was also expected to take steps to see that the property of the trust was protected and permission was given to him to withdraw the amount after taking permission of the Joint Charity Commissioner.

5. In accordance with the aforesaid order dated 30th September, 2011 the *fit person* made some members, he arranged to hold the election and the new trustees have taken over the control of the trust. This change report is

challenged by present Appellants and that proceeding is still pending in the office of Deputy Charity Commissioner. The submissions made show that the present Appellants have challenged the legality of membership of the members who were induced as members by the *fit person* and election itself is challenged.

6. The main submission of learned counsel for the present Appellants is that under section 47 of the Act new trustees can be appointed but the Joint Charity Commissioner cannot appoint *fit person* which was possible under section 41 of the Act. He submitted that when original Respondent No.2 was still there, as a defacto trustee the powers under section 41 of the Trust Act could not have been exercised. He placed reliance on the observations made by this Court in two cases reported as ***1997 (1) Mah.L.J. 193 (Shankarrao Sakharamji Supare V/s B.J.Loya, Joint Charity Commissioner and others) and 2010 (4) Mah.L.J. 253 (Avinash Ganpatrao Shegaonkar and others V/s Jayawant @ Babasaheb S/o Vishwanath Uttarwar and others.*** On the other hand, the learned counsel for the Respondents placed repliance on the decision given by

the Apex Court in Civil ***Appeal No.6639 of 2003 (Trambakeshwar Devasthan Trust & Anr. V/s President, Purohit Sangh & Ors.)***. The learned counsel for Respondfents submitted that there was no trustee when the order was made and so the Joint Charity Commissioner exercised the power given under section 41 of the Trust Act though the proceeding was shown to be filed under section 47 of the Trust Act. In the present proceeding, there is one more circumstance. The original respondents are dead and so new persons had applied to this Court to allow them to prosecute the matter and so the members of the trust have now prosecuted the present appeal. The fact that the *fit person was* appointed for holding elections and the new trustees are elected needs to be kept in mind. It also needs to be kept in mind that the grievance of the Appellants with regard to legality of admission of new members needs to be considered by the Deputy Charity Commissioner in the inquiry or change report itself.

7. Copy of order made by the Deputy Charity Commissioner in proceeding No.1264 of 2004 and dated 15th September, 2005 is on the record. This order shows that

the change report filed at that time was rejected but simultaneously the Deputy Charity Commissioner made the order to delete the names of the trustees which were on record in Schedule I. This order was not challenged by original Respondent Birj Kapoor who was claiming that he was a defacto trustee. Thus, as per the record, on 15th September, 2005 there was no trustee for managing the affairs of the trust when the Joint Charity Commissioner made order of appointment of *fit person,* on 30th September, 2011. The provisions of section 47 and 41 of the Trust Act show that the Fit Person can be appointed when no trustee is there to manage the affairs. This Court has carefully gone through the scheme of the trust. In view of the scheme of the trust also this Court holds that the Joint Charity Commissioner has not committed any error in appointing a *fit person*. It is clear that the sole trustee who was alive during the inquiry was also not on the record as a trustee and he was avoiding to take elections. In view of these circumstances, there was no other alternative before the Joint Charity Commissioner than to take such step.

8. The propositions made in the cases cited by learned counsel for the Appellants and also for Respondent cannot

be disputed. The facts of the present case are altogether different. It cannot be disputed that there is power with Joint Charity Commissioner to appoint *fit person* under section 41 of the Trust Act. Though the proceeding was filed under section 47 of the Trust act, in view of the requirement and the aforesaid circumstances, the Joint Charity Commissioner has exercised the power.

9. In the result, appeal stands dismissed.

(T. V. NALAWADE, J.)

Dt.21/01/2016.
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