

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.786 OF 2016

**Akhil Bharatiya Gandharva Mahavidyalaya
Mandal Through President**

Mr.Prabhakar Bhimrao Bhandare & ors.

: Petitioners

versus

Mr. Digvijay Narayan Vaidya and ors.

: Respondents.

Mr. A S Khandeparkar i/by Mr. S M Kamble for the Petitioners.

Mr. S M Antarkar for the Respondent Nos.1 and 2.

Mr. R P Deodhar for the Respondent Nos.3, 4, 7 to 13 and 15.

Mrs. V S Nimbalkar, AGP for the Respondent No.17.

CORAM : R. M. SAVANT, J.

DATE : June 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 22/12/2015 passed by the learned Joint Charity Commissioner, Greater Mumbai Region, Mumbai by which order the application filed by the Petitioners for trying the issue of jurisdiction and maintainability of the application filed under Section 41-E of the Maharashtra Public Trust Act, 1950 as a preliminary issue came to be rejected.

2 The Respondent Nos.1 and 2 are the Applicants who have filed the application under Section 41-E of the Maharashtra Public Trust Act, 1950 (for short "the said Act"). By the said application the following reliefs were claimed:-

“(a) The Respondent Nos.2 to 19 may kindly be removed or dismissed from their respective offices as members of the Council of Management, Executive Committee and Trusteeships of the Respondent No.1.

(b) Pending hearing and final disposal of the present application, the Respondent Nos.2 to 19 may kindly be restrained & acting upon from their respective offices, as members of the Council of Management, Executive Committee and Trusteeships of the Respondent No.1, since the Respondents are claiming to have passed the resolutions, in the Joint Meeting of the Council of Management and Executive Committee at 10.00 a.m. on 22/03/2015; and the Special General Body Meeting on 22/03/2015 itself, regarding revival of the old curriculum of 2006 by cancelling the revised and current curriculum of August/September 2012, so as to protect trust properties, reputation and interest of trust.”

3 Having regard to the said prayers as also having regard to whether the Applicant No.2 Shri Sharad Murlidhar Shidhaye is an interested person, both the jurisdiction under Section 41E of the said Act for claiming such reliefs, and the maintainability of the said application was questioned. The maintainability of the said application was sought to be justified on behalf of the Respondent Nos.1 and 2 by contending that since the Petitioners herein i.e. the Opponents in the said application are reviving the old curriculum of 2006 by cancelling the revised and current curriculum of August/September 2012 and they are also reducing the examination fees of students. The said decision of the Petitioners has effect of causes prejudice or loss to the Petitioner Trust and therefore the application under Section 41E of the said Act is

maintainable.

4 It is required to be noted that the scope of the application is as to whether the Petitioners herein i.e. the Respondent Nos.2 to 19 to the application are required to be removed or dismissed as members of Council of Management as also whether they could have changed the curriculum and also reduce the examination fees. Hence the controversy in the said application lies in a narrow compass.

5 Having regard to the nature of the dispute, the learned Joint Charity Commissioner was of the view that both the issues i.e. maintainability as well as jurisdiction can be adjudicated along with the main Application (Exhibit 1). In my view, no fault can be found with the learned Joint Charity Commissioner in so holding, as the adjudication of the preliminary issue as regards jurisdiction and maintainability would virtually decide the main application itself as thereafter virtually nothing would remain to be tried in the main application, and therefore, no useful purpose could be served by directing the said issue to be heard as a preliminary issue. Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed. However, the hearing of the application filed under Section 41E of the Maharashtra Public Trust Act, 1950 is expedited.

[R.M.SAVANT, J]