

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3167 OF 2013

Dr. Akhlaque Ahmed Mahmed Ali Vadwan
and Others.

.. Petitioners

Vs

Ismail Haji A. Sattar Jamadar and Others.

.. Respondents

—

Shri Ashutosh M. Kulkarni for the Petitioners.

Shri Shrishail Sakhare for the Respondent Nos.1 and 2.

Shri Manish Pabale, AGP for the Respondent No.14.

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CORAM : A.S. OKA & A.A.SAYED, JJ

DATED : 17TH OCTOBER 2016

PC.

1. By consent of the parties, the Petition is forthwith taken up for final hearing. The Rule has been already issued.

2. The challenge in this Petition under Article 226 of the Constitution of India is to the order dated 13th March 2013 passed by the Assistant Charity Commissioner, Solapur Region, Solapur on an Application under Section 41-A of the Bombay Public Trust Act, 1950 (for short “the said Act”) filed by the first and the second Respondents. The learned counsel appearing for the first and the second Respondents states that in fact, the prayer made in the Application filed by the first and the second Respondents was completely different and the relief specifically sought in the said Application has not been considered by

the learned Assistant Charity Commissioner. He has no objection for setting aside the impugned order and for directing the learned Assistant Charity Commissioner to decide the Application afresh.

3. We have perused the impugned order. From the impugned order, it appears to us that the learned Assistant Charity Commissioner was not conscious of the nature of powers which can be exercised while deciding the Application under Section 41-A of the said Act. A Division Bench of this Court in the case of *Vanmala Manoharrao Kamdi and Others v. Deputy Charity Commissioner, Nagpur and Others*¹ held that the power exercised under Section 41-A of the said Act by the learned Charity Commissioner is administrative in nature and that the learned Charity Commissioner does not act as a judicial or quasi-judicial authority while exercising the power under the said Section. Considering this aspect, the Rule was issued by this Court.

4. In view of the statement made by the learned counsel appearing for the first and second Respondents, we pass the following order:

ORDER ;

- (a) The impugned order dated 13th March 2013 passed on the Application No.61 of 2013 filed by the first and second Respondents is hereby quashed and set

¹ [2012(3) Mh.L.J. 594

aside and the said Application is restored to the file of the Assistant Charity Commissioner, Solapur Region, Solapur;

- (b) We direct the Petitioners and the first and second Respondents to appear before the learned Assistant Charity Commissioner, Solapur Region, Solapur, on 19th November 2016 at 11.00 a.m. The learned Assistant Charity Commissioner, Solapur Region, Solapur shall issue notices to the other parties to the Application No.61 of 2013;
- (c) Considering the fact that the Application is of the year 2013 and the nature of direction sought, the learned Assistant Charity Commissioner, Solapur Region, Solapur shall give necessary priority to the disposal of the said Application and shall endeavour to dispose of the said Application by the end of May 2017;
- (d) Needless to add that while deciding the said Application, the learned Assistant Charity Commissioner, Solapur Region, Solapur will take

into consideration the law laid down by the Division Bench of this Court in the case of ***Vanmala Manoharrao Kamdi and Others.***

- (e) All contentions on merits of the Application are kept open;
- (f) The Rule is partly made absolute in above terms;
- (g) The learned Assistant Charity Commissioner, Solapur Region, Solapur, shall act upon an authenticated copy of this order.

(A.A. SAYED, J)

(A.S. OKA, J)