

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5233 OF 2013

Surajmalji Ghevarchandji Sakhala
and Ors.

.. Petitioners

-Versus-

Joint Charity Commissioner, Nashik
Region, Nashik and Anr.

..Respondents

Mr. Anupam Dholakia i/b. Mrs. Neela Dholakia for petitioners
Mrs. M.S.Bane, AGP for State

CORAM : G.S. KULKARNI, J.

DATE : 23rd August 2016.

P.C.

1] Rule. Returnable forthwith. Respondents waive service. By consent of the learned Counsel for parties heard finally. The petitioners are trustees of a public trust by name "Jain Shwetambar Sthanakwasi Shree Sangh, Nashik". The challenge in the petition is to an order dated 19th January 2013 passed by the learned Joint Charity Commissioner, Nashik. By the impugned order the Charity Commissioner, in exercise of powers under section 83 of the Bombay Public Trust Act, has accorded sanction to prosecute the petitioner trustees, for the alleged breach under section 22, 32(1), 33(1) and (2) read with sections 66 and 67 of the Bombay Public Trusts Act, 1950 (for short "the Act"). The learned

Counsel for the petitioner in assailing the impugned order has made two fold submissions. He firstly submits that to a show cause notice dated 11th February 2009, issued by the Deputy Charity Commissioner, a reply was filed on behalf of the trust by its letter dated 9th March 2009, setting out the relevant compliances and a request to drop the show cause notice after verifying the contentions as urged. It is his submission that the impugned order does not find any discussion on these contentions which were urged on behalf of the trustees. He submits that, however, the learned Joint Charity Commissioner has simplicitor observed that the said reply was not satisfactory. It is his submission that reasons ought to have been given while considering the application in the proceedings which pertain to grant of sanction to prosecute the trustees.

2] Next submission of the learned Counsel for the petitioner is that in passing impugned order, the learned Joint Charity Commissioner has acted upon a subsequent report dated 13th July 2012 of the Deputy Charity Commissioner, Nashik. It is submitted that this report was never furnished to the petitioners and the petitioners for the first time learnt about the said report from the impugned order. It is pointed out that accordingly immediately by a letter dated 4th March 2013 a request was made by the trust to make furnish and make available a copy of the said report.

3] Learned AGP on the other hand has made submissions in support of the impugned order. However, she is not in a position to show that the petitioners are not correct in their submission on non supply of the copy of the said report of the Deputy Charity Commissioner to the petitioners. In any event, the impugned order is completely silent on this aspect. A bare perusal of the impugned order also indicates that the contentions as urged on behalf of the petitioner trust in its reply to the show cause notice dated 9th March 2009 are also not seriously considered. By the impugned order, the Joint Charity Commissioner has exercised powers under section 83 of the Act by which a serious consequence of launching of a prosecution against the petitioners is entailed. Surely, when the consequence is of such a serious nature, it is expected that the learned Joint Charity Commissioner would take all caution and to see that the persons (petitioners) who would be adversely affected, are granted proper opportunity of being furnished with all relevant material and also an opportunity of submitting a proper reply / say before the final orders are passed. This basic element is absent in the impugned order and, therefore, the impugned order is required to be quashed and set aside.

3] Considering the facts and circumstances of the case, it would be appropriate and in the interest of justice that an opportunity is granted to

the petitioners by permitting them to avail a copy of the report dated 13th July 2012 of the Deputy Charity Commissioner, which be furnished by the respondents to the petitioners – trust within three weeks from today. On the receipt of a copy of this report, the petitioner trust is permitted to submit a consolidated reply before the Joint Charity Commissioner along with all the relevant and proper documents in support of its case. The learned Joint Charity Commissioner, after considering the reply of the petitioner and after granting an opportunity to the petitioner trust of hearing, shall pass necessary orders in accordance with law, within a period of eight weeks from the date of hearing.

5] Petition is allowed in the aforesaid terms. No costs.

(G.S. KULKARNI, J.)