

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO.12693 OF 2015**

Shreemant Sanjay Bhalchandra Khasgiwale.     ]     ... Petitioner

Versus

1. Vitthal Rukmini Temple Committee,                     ]  
     Pandharpur,                                                     ]  
 2. The District Collector for Solapur.                     ]     ... Respondents

Mr. Sushil Nimbkar for Petitioner.  
 None for Respondents.

**CORAM :- M. S. SONAK, J.**  
**DATE    :- FEBRUARY 08, 2016**

**P. C. :-**

1.           The challenge in this petition is to the order dated 20/11/2015, by which the appeal memo and other documents in the appeal instituted by the petitioner before the Charity Commissioner, Mumbai, have been returned by the said Charity Commissioner, Mumbai, to the petitioner for presentation before the Joint Charity Commissioner, Latur, thereby holding that the Joint Charity Commissioner, Latur, is also competent to exercise appellate powers in terms of Section 3(2) of The Pandharpur Temples Act, 1972 ('said Act').

2. Mr. Sushil Nimbkar, learned Counsel for Petitioner, has submitted that Section 3(2) of the said Act provides for an appeal against the decision of the authorised officer to the Charity Commissioner. There is no provision under the said Act which permit delegation from a Charity Commissioner to a Joint Charity Commissioner. Section 56 of the said act also provides that save as expressly provided by or under the said Act, the provisions of the Public Trusts Act, 1950 ('Trusts Act') shall apply in relation to the management and administration of the Temples, the properties of the endowment and registered trusts, Temples Fund and all matters ancillary or connected therewith. Mr. Nimbkar points out that in terms of Section 56 of the said Act, the provisions of the Trusts Act can apply, only to the extent such provisions are not inconsistent with the provisions of the said Act. Mr. Nimbkar points out that since there is provisions for delegation of power by a Charity Commissioner to a Joint Charity Commissioner, in the matter of exercise of appellate power under Section 3(2) of the said Act, the Charity Commissioner, relying upon the provisions of the Trusts Act, is not entitled to delegate such powers to the Joint Charity Commissioner. For these reasons, Mr. Nimbkar submits that the impugned order is in excess of jurisdiction and decision of the Charity Commissioner who should have entertained the petitioner's appeal against the decision of the authorised officer.

3. Section 3 of the said Act reads thus :-

*“3. (1) If any question arises -*

*(a) whether any person is -*

*(i) a Badva,*

*(ii) a Sevadhari,*

*(iii) a Kshetropadhye,*

*(iv) an Utpat,*

*(v) a Koli, or*

*(vi) a person having interest, or*

*(b) whether a person has any hereditary right or privilege to exercise in, or in relation to, any of the Temples, or*

*(c) whether a person has exercised any such right or privilege before the appointed day, or*

*(d) whether a person is a co-share of the person having interest, or*

*(e) which is incidental, or in relation, to any of the matters aforesaid, the authorised officer shall, after giving the party an opportunity of being heard and after holding an inquiry, decide the question.*

*(2) Any person aggrieved by the decision of the authorised officer may, within thirty days of such decision, file an appeal to the Charity Commissioner. The provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963 shall apply to the filing of such appeal.*

*(3) The decision of the authorised officer, subject to an appeal under sub-section (2), shall be final and conclusive, and shall not be questioned in any suit or proceeding in any court.”*

4. Similarly, Section 56 of the said Act reads thus :-

*“56. Save as expressly provided by or under this Act, the provisions of the Public Trusts shall apply in relation to the management and administration of the Temples, the properties of the endowment and registered trusts, Temples Fund and all matters ancillary or connected therewith.”*

5. The expression 'Charity Commissioner' has not been defined under the said Act. Therefore, it is necessary to fall back upon the definition of this expression under the Trusts Act. Section 2(3) of the Trusts Act defines 'Charity Commissioner' to mean Charity Commissioner appointed under Section 3 of the Trusts Act. Section 3 of the Trusts Act provides that State Government may, by notification in the official gazette appoint an Officer to be called the 'Charity Commissioner', who shall exercise such power and shall perform such duties and functions as are conferred by or under the provisions of this Act and shall, subject to such general or special orders as the State Government may pass, superintend the administration and carry out the provisions of Trusts Act.

6. Section 3A of the Trusts Act, which is relevant, reads thus :-

*“3A. Joint Charity Commissioner – [1] The State Government may, by notification in the Official Gazette, appoint one or more Officers to be called Joint Charity Commissioners who shall, subject to the control of the Charity Commissioner and to such general or special orders as the State Government may pass, exercise all or any of the powers and perform all or any of the duties and functions, of the Charity Commissioner.]*

*[2] The State Government may, by general or special order, declare a joint Charity Commissioner to be the regional head to superintend, subject to the control of the Charity Commissioner, the administration in one or more regions or sub-regions, as may be specified in such order.]”*

7. Upon conjoint reading of the provisions contained in the said Act and the Trusts Act, it is quite clear that in terms of Section 3(2) of the said Act, appellate power against the decision of the authorised officer have been conferred upon the 'Charity Commissioner'. Since the said Act does not define the expression 'Charity Commissioner', we have to essentially fall back upon the definition contained in the Trusts Act. Section 3A of the Trusts Act, very clearly empowers the State Government by notification in the official gazette to appoint one or more officers to be called as Joint

Charity Commissioners who shall, subject to the control of the Charity Commissioner and to such general or special orders as the State Government may pass, exercise all or any of the powers and perform all or any of the duties and functions, of the Charity Commissioner.

8. In the aforesaid circumstances, it is quite clear that a Joint Charity Commissioner appointed under Section 3A of the Trusts Act, subject to the control of the Charity Commissioner and to such general or special orders as the State Government may pass, is competent to exercise all or any of the powers and perform all or any of the duties and functions, of the Charity Commissioner. Considering the width and amplitude of the provisions contained in Section 3A of the Trusts Act, it is not possible to accept the contention that a Joint Charity Commissioner is incompetent to entertain an appeal against the decision of the authorised officer under the said Act. This is not a case of any inconsistency between the provisions of the two Acts. Section 3(2), does not, whether expressly or impliedly, bar delegation. Therefore, it is necessary to refer to the provisions contained in the Trusts Act. The provisions contained in the Trusts Act make it clear that a Joint Charity Commissioner, subject to the control of the Charity Commissioner and to such general or special orders as the State Government may pass, is competent to exercise all or any of the powers and perform all or any of the duties and functions, of the Charity Commissioner. This is sufficient to uphold the order made by the Charity Commissioner.

9. Accordingly, there is no jurisdictional error in the making of the impugned order. The petition is therefore dismissed.

10. The learned Counsel for petitioner states that within two weeks, the petitioner will institute an appeal under Section 3(2) of the said Act before the Joint Charity Commissioner, Latur, in compliance with the impugned order. In case the appeal is instituted within a period of two weeks from today, then the Joint Charity Commissioner, Latur, is directed to entertain the same, without adverting to the issue of limitation. This is because the petitioner, was bona fide, pursuing the present petition. Further, in terms of Section 3(2) of the said Act, the provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963 shall apply to the filing of such appeal.

11. This petition is accordingly dismissed with liberty as aforesaid. There shall be no order as to costs.

**(M. S. SONAK, J.)**