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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.971 OF 2016

Ram Swarath R. Yadav & Ors. ...Petitioners
vs.
Assistant Charity Commissioner
Mumbai Regional Office of Charity
Commissioner, Maharashtra & Ors. ...Respondents

Ms K.P.Reshma Ravi i/b K.P.Ravi for the Petitioners
Ms Uma Palsule-Desai, AGP for the respondent Nos.1
and 2.

CORAM : A.S.OKA, &
SMT.ANUJA PRABHUDESSAI, JJ.
DATE : DECEMBER 2, 2016

P.C.:

1 Heard the learned counsel for the petitioner. An application seeking relief under section 41A of the Bombay Public Trusts Act, 1951 was made by the contesting respondents. The said application is pending before the learned Charity Commissioner, Mumbai. In the said application, the present petitioners filed an application raising two issues about the maintainability of the application and the jurisdiction of the learned Assistant Charity Commissioner to entertain the application. The said application has been rejected by the impugned order dated 9th December 2015.

2 The submission of the learned counsel for the petitioner is that on the basis of the application under section 41A, the learned Assistant Charity

Commissioner has no jurisdiction to pass an order directing holding of elections. She relies upon the decision of the learned Single Judge of this Court in case of Lahudas Sambhaji Karad vs. The State of Maharashtra and Others¹.

3 We have perused the impugned order and the finding recorded by the learned Assistant Charity Commissioner. There is a decision of a Division Bench of this Court which holds that the proceedings under section 41A of the said Act are neither judicial or quasi-judicial proceedings. There is no finding recorded in the impugned order that under section 41A, the relief which is prayed for in the application filed by the second respondent can be granted. It cannot be disputed that the learned Assistant Charity Commissioner has jurisdiction to decide the application under section 41A. Moreover, the issue of maintainability is not decided by the impugned order on the ground that the question raised is a mix question of law and facts.

4 Therefore, notwithstanding the impugned order, it is always open for the petition to urge before the learned Charity Commissioner that the relief which is prayed for in the application filed by the second respondent cannot be granted in exercise of power under section 41A of the Bombay Public Trusts Act, 1951.

¹ AIR 1993 BOMBAY 315

5 Hence, subject to what is observed above,
petition is disposed of. All contentions on merits
are kept open.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)