

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

914 FIRST APPEAL NO. 3018 OF 2016

1. Shahurao S/o Madhavrao Deshmukh
Age : 47 years, Occu : Agriculture,
R/o. Narsi (Namdev), Tal. & Dist. Hingoli

2. Deelip S/o Rajeshwarrao Tarafdar
Age : 52 years, Occu : Agri,
R/o. Narsi (Namdev),
Tal. & Dist. Hingoli

.. Appellants
(Original Petitioners)

VERSUS

1. The State of Maharashtra,
General Administration Department &
Co-operative Department,
Mantralaya, Mumbai.

2. The Assistant Charity Commissioner
Parbhani, Dist. Parbhani

3. Tahsildar,
Tahsil Office, Hingoli
Tal. & Dist. Hingoli

4. Bhikaji S/o Bhimashankar Kirtankar,
Age : 47 years, Occu : Agri,
R/o. Narsi (Namdev), Tal. & Dist. Hingoli

5. Subhash S/o Raghoji Hule
Age : 62 years, Occu : Agri.,
R/o. As above

6. Dhondiba S/o Aaneba Labhade
Age : 62 years, Occu : Agri,
r/o. As above

7. Narsaji S/o Tukaram Gugale

Age : 47 yars, Occu : Agri,
R/o. As above

8. Devaba S/o Panduji Mule
Age : 57 years, Occu : Agri,
R/o. Masod, Tal. Sengaon,
Dist. Hingoli
9. Dattarao S/o Niloba Jadhav
Age : 60 years, Occu : Agri,
R/o. Narsi (Namdev)
Tal. & Dist. Hingoli
10. Ganeshlal Shankarlal Bahete
Age : 67 years, Occu : Agri,
R/o. As above
11. Ramrao S/o. Sakharam Solanke
Age : 37 years, Occu : Agri,
R/o. As above.
12. Bhagwan S/o. Maharaji Sapatgaonkar
Age : 67 yers,
R/o. Sapatgaon, Tal.Sengaon,
Dist.Hingoli
13. Bharat Maharaj
Age : 42 years, R/o. Kolsa,
Tal. Sengaon, Dist. Hingoli
14. Gyanba S/o. Sakharam Temkar
Age : 56 years, Occu : Agriculture,
15. Bikulal s/o Rameshwar Baheti
Age : 55 years, Occu : Agriculture
16. Chandramohan s/o. Kundanprasad Tiwari
Age : 55 years, Occu : Agriculture,
17. Satish S/o Naraharrao Vidolkari
Age : 52 years, Occu : Agriculture
18. Vithal s/o. Punjaji Washimkar

Age : 50 years, Occu : Agriculture,
All R/o. Narsi (Namdeo)
Tal. & Dist. Hingoli

..Respondents
(Orig. Respondents)

.....

Advocate for Appellants	:	Mr. S.V. Mundhe
AGP for Respondents no.1 to 3/State	:	Mr. S.P. Sonpawale
Advocate for respondent Nos.5to 7,9, 10 to 12	:	Mr. K M Nagarkar
Advocate for respondent Nos.4, 8, 10 to 13	:	Mr. M.V. Choudhari & Mr. A.G. Godhamgaonkar
Advocate for Respondent Nos.14 to 18:	:	Mr. S.G. Nandedkar
Advocate for Respondent nos.4, 5, 7, 12, 13	:	Mr. S.S. Londhe

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CORAM : P.R. BORA, J.
Dated: July 04, 2017

ORAL JUDGMENT :

. Heard learned Counsel appearing for the respective parties. Perused the impugned Judgment and the other material placed on record. The appellants have challenged the Judgment and order dated 31.08.2004 passed by the Learned Assistant Charity Commissioner, Parbhani, in Enquiry Application No.152/2004, which has been confirmed by the learned Additional District Judge, Hingoli, in Misc. Civil Application No.42/2004 decided on 26.04.2006. In Enquiry Application No.152/2004 the Assistant Charity Commissioner has framed the scheme for the management of subject Public Trust. The only objection raised in the present appeal

in exception to the aforesaid Judgments and which requires consideration is, whether the present appellants were liable to be heard in the proceedings before the Assistant Charity Commissioner before framing of the scheme.

2. The learned Counsel appearing for the appellants read out sub section (2)(b) of Section 50 A of the Public Trust Act, 1950, (hereinafter referred to as the 'Act') and submitted that, as envisaged in the aforesaid provision, the learned Assistant Charity Commissioner before settling the scheme for administration of the subject trust under Section 50 A of the Act must have given a due notice and opportunity of hearing to the present appellants since they are the persons having interest in the affairs of the trust. The learned Counsel further submitted that, since the learned Assistant Charity Commissioner did not give such opportunity to the appellants the scheme allegedly framed under Section 50-A of the Act is liable to be set aside on this sole ground of non-compliance of the aforesaid mandatory requirement.

3. The objection so raised in the appeal is liable to be rejected for the reason that, the subject matter does not fall within the

purview of Section 50A(2)(b) of the Act.

4. The application which was preferred before the Assistant Charity Commissioner was admittedly for framing of the scheme in respect of the subject trust. It was thus, an application under Section 50 A (1) of the Act. The said section reads thus :

Section 50 A (1) : *Notwithstanding anything contained in section 50, where the Charity Commissioner has reason to believe that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, or where two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, the Charity Commission may, if, after giving the trustees of such trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust.*

5. It is not in dispute that, at the relevant time, Tahsildar was the sole trustee, who was looking after the affairs of the trust since 1989. It is also undisputed that the Tahsildar was duly served by the notice from the office of the Assistant Charity Commissioner before the scheme was framed. The material on record reveals that at the relevant time, the Tahsildar was busy with election programme

and as such could not appear before the Assistant Charity Commissioner and could not submit his say in the matter before the Assistant Charity Commissioner. In the circumstances the learned Assistant Charity Commissioner on the basis of material brought before him framed the scheme for the proper management of the subject trust. The order passed by the Assistant Charity Commissioner though was challenged before the District Court, no interference is caused in the said order.

6. As noted earlier the only objection raised by the appellant is that though they are the persons having interest in the affairs of the trust, they were not heard by the Assistant Charity Commissioner before framing the scheme. The appellants have alleged non-compliance of section 50A (2)(b) of the Act, which reads thus :

50A. Power of Charity Commissioner to frame, amalgamate or modify schemes.

(1).....

(2) *Where the Charity Commissioner is of opinion that in the interest of the proper management or administration, two or more public trusts may be amalgamated by framing a common scheme for the same, he may, after -*

(a) publishing a note in the Official Gazette¹[and also if necessary in any newspaper which in the opinion of the Charity Commissioner is best calculated to bring to the notice of persons likely to be interested in the trust] with a wide circulation in the region in which the trust is registered, and

(b) giving the trustees of such trusts and all other interested persons due opportunity to be heard,

frame a common scheme for the same.

7. Plain reading of the aforesaid provision makes it clear that, it prescribes the procedure to be followed if two or more trusts are to be amalgamated by framing a common scheme for the same. In such a case, notice and due opportunity of hearing is necessary to be given to the trustees of such trusts and all other persons interested in the affairs of the said trusts. It is thus evident that, the aforesaid provision cannot be applied to the application or proceeding initiated under Section 50A (1) of the Act.

8. In the present matter the scheme has been admittedly framed under Section 50A (1) of the Act wherein the only requirement was that a notice and opportunity of hearing is given to the trustees of the said trust for the management of which the scheme has been framed. As has been noted earlier, Tahsildar was

undisputedly the only trustee of the subject trust and he was given due notice and also the due opportunity of hearing. It therefore does not appear to me that, there is any substance in the objection raised by the appellants against the Judgment and order passed by the Assitt. Charity Commissioner as well as by the learned Additional District Judge.

9. The appellants have wrongly relied upon the provisions under Sec.50A (2)(b) of the Act in order to support their contention. As noted by me herein above, the said provision is not applicable in the present matter. The appeal is thus devoid of any merit. Hence the following order.

ORDER

- i) The appeal is dismissed.
- ii) Interim order passed stands vacated.
- iii) Pending Civil application, if any, stands disposed of.

(P.R. BORA, J.)

ggp