

-1-

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

WRIT PETITION NO. 9691 OF 2016

**YOGESH KESHARLAL MANUDHANE AND OTHERS
VERSUS
THE DEPUTY CHARITY COMMISSIONER JALGAON AND OTHERS**

...

**Advocate for Petitioners : Mr.R.R.Mantri h/f Agrawal Bhoomit A. And
R M Sancheti**

**AGP for Respondents: Mr.P.S.Patil
Adv.Mr.R.F.Totla for R.2.**

...

WITH

WRIT PETITION NO.9878/2016

**ERANDOL SHIKSHANA PRASARAK MANDAL THROUGH ITS
PRESIDENT AND MANAGING COMMITTEE AND ORS.**

VERSUS

MANOJ GHANASHYAM BIRLA AND ORS

...

Adv.for petitioners : Mr.S.R.Choukidar

AGP for Respondents: Mr.P.S.Patil

Adv.Mr.R.F.Totla for R.1

...

WITH

CIVIL APPLICATION NO3380/2017 IN WP/9878/2016

DIPAK SOMNATH BIRLA AND ORS

VERSUS

**ERANDOL SHIKSHANA PRASARAK MANDAL THROUGH ITS
PRESIDENT AND MANAGING COMMITTEE AND ORS.**

...

Adv.for applicants : Mr.M.V.Salunke

...

-2-

**CORAM : S.C.DHARMADHIKARI &
MANGESH S. PATIL,JJ.**

DATE : 26/07/2017

PER COURT :-

The order passed by the Incharge Deputy Charity Commissioner, Jalgaon dated 27/07/2016 on an application stated to be made under Section 41-A of the Maharashtra Public Trusts Act, 1950 [Exh.52] is under challenge in this Petition under Article 226 of the Constitution of India. The challenge is raised by the original opponents to Application Exh.52.

2] During the course of arguments, two contentions have been raised by Mr.R.R.Mantri appearing in support of this petition.

3] Mr.Mantri would submit that this Court's powers under Articles 226 and 227 of the Constitution of India would enable this Court to take note of a submission which goes to the root of the matter. According to Mr.Mantri, the Deputy Charity Commissioner that too In-charge at Jalgaon could not have decided Application Exh.52. No Deputy Charity Commissioner or Assistant Charity Commissioner for that matter can decide this Application which is traceable and invokes the powers u/s 41-A of the M.P.T.Act. Secondly assuming and without admitting that the Deputy and Assistant Charity

Commissioner can exercise such powers as claimed by Shri Totla in terms of a Notification No.12674-B dated 10/06/2075 published in Maharashtra Government Gazette Part-IV-B dated 19/06/1975 still this power is administrative in nature. It is not a power by which the Deputy or Assistant Charity Commissioner can decide any dispute or contested issues and matters. He must exercise this power only to ensure that the administration and management of the affairs of the trust is carried on smoothly, efficiently and not hampered by the disputes or fights between trustees. Inviting our attention to this Section, it is argued by Mr.Mantri that the ambit and scope of the power conferred by Section 41-A has been discussed and decided by this Court. The marginal reading of this Section itself would clearly indicate that it is a power of the Charity Commissioner to issue directions for proper administration of the Trust. To ensure that the Trust is properly administered, the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purpose of Trust, the Charity Commissioner can issue directions to any trustee of a public trust or any person connected therewith. Mr.Mantri would submit that this power is conditional upon a satisfaction of the Charity Commissioner that any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of. This condition must be satisfied and that satisfaction must be apparent from the order of the Charity

Commissioner. In the present case, both these aspects and going to the root of the case have not been considered much less decided.

4] When such contentions of Shri Mantri were brought to the notice of Shri Totla appearing for the contesting respondent, initially an attempt was made to argue that both aspects have been duly considered. In the light of the Maharashtra Government Notification, there is a transfer of power and Deputy or Assistant Charity Commissioner within whose region a trust is situate or carrying on its affairs can issue a direction under Section 41-A. Secondly, an attempt was made to point out that the satisfaction in terms of the provision has been duly recorded.

5] After brief arguments, we indicated to both sides that it would be better and in the interest of justice if the impugned order is quashed and set aside. The Enquiry No.3/2016 [Exh.52] is restored to the file not of the Deputy or Assistant Charity Commissioner, Jalgaon region but that of the Joint Charity Commissioner. This suggestion was made because one of the complaint made by the petitioners is that earlier similar relief as sought is denied by the higher authority. That order is defied by the In-charge Deputy Charity Commissioner. Both sides stated that the Joint Charity Commissioner is not placed at Jalgaon but functions from Nasik.

This Joint Charity Commissioner has jurisdiction over the subject trust though it is located at Jalgaon. In such circumstances, we indicate to both sides that now the proceedings would be made over to the Joint Charity Commissioner, Nasik so as to avoid any controversy or issue about jurisdiction or other technical aspects.

6] Both learned advocates on seeking instructions agreed that the impugned order can be quashed and set aside. The application made seeking to invoke Section 41-A of the M.P.T.Act, 1950 be made over for hearing and final disposal before the Joint Charity Commissioner at Nasik. They also agreed that all contentions of both sides be kept open.

7] In the light of the above agreement, and by consent of both sides, we quash and set aside the impugned order. We direct the Joint Charity Commissioner, Nasik Division Nasik to call for all the records and papers necessary for decision on the application invoking its powers under Section 41-A of the M.P.T.Act, 1950. He shall decide this Application afresh and without being influenced by any of the observations, findings and conclusions in the impugned order. He shall decide this Application within a period of two months from the date of receipt of copy of this order. All contentions on merits of this Application are kept open.

8] All parties agree that they will appear on **5th August, 2017** at 10.30 a.m. before the Joint Charity Commissioner, Nasik.

9] After hearing Mr.M.V.Salunke, on Civil Application No.3380/2017, we do not see any reason to keep it pending. The main Petition has been disposed of and we have not expressed any opinion on the disputes between the trustees, enrollment of new members/trustees or otherwise and every single issue will be decided in appropriate legal proceedings. We do not see how the applicants in this Civil Application can obtain any reliefs much less substantive for themselves in a Petition by somebody else. By clarifying that we have not in any way expressed any opinion on their rights or issues raised by them, we dispose of this Civil Application.

(MANGESH S. PATIL,J.)

(S.C.DHARMADHIKARI,J.)

umg/