

the learned Counsel for the appellants submit that the impugned order has been made with utmost haste and without complying with the principles of natural justice and fair play. They point out that appellant Nos. 1,5,6 and 7 were not even properly impleaded as parties to the proceedings and yet, an order, which is adverse to them, has been made. They point out that only their statements were recorded and thereafter they were not afforded any opportunity of hearing before the impugned order was made. They submit that the parameters of Section 47 are not fulfilled and the impugned order is liable to be set aside on that ground alone.

4 Mr Nilesh Ukey, learned advocate for Respondent No.2 submits that though the impugned order states that the proceedings under Section 47 of the said Act were initiated on the basis of the complaint of Respondent No.2, in fact, Respondent No.2 has not made any such complaint. He states that Respondent No.2 has also filed an affidavit in this Court to the effect that, Respondent No.2 at no stage, made any complaint for initiating of proceedings under Section 47 of the said Act.

5 In pursuance of directions issued by this Court, Mr Ravindra Gavhane, the Inspector of office of the Joint Charity Commissioner has filed an affidavit.

6 In this affidavit, it is stated that the cognizance was taken of the complaint / application made by Respondent No.2 and the

proceedings were initiated under Section 47 of the said Act. It is further stated that the notices were issued and even the statements of some of the Appellants were recorded. On the basis of such statements, the report was prepared. On the basis of such report, the impugned order has been passed. The affidavit states that if this Court comes to the conclusion that there is violation of principles of natural justice, this Court may direct holding of fresh inquiry within some reasonable and stipulated time.

7 Mr Dabke, learned AGP submits that the Joint Charity Commissioner has exercised the powers under Section 47 of the said Act fairly and reasonably. He submits that the report, which is based upon the inquiry and recording of statements, reveals that some action was necessary under the provisions of the said Act. In any case, he submits that in case this Court comes to the conclusion that a fresh inquiry is necessary after offering of an opportunity to the persons who were likely to be affected by the impugned order, then Respondent No.1 is not averse to hold such fresh inquiry and dispose of the same within some stipulated period. He points out that the report which is on record, also, *prima facie* warrants action under Section 41(D) of the said Act, and therefore, liberty can be granted for taking action under Section 41(D) of the said Act as well.

8 Upon taking into consideration the rival contentions and in particular, the affidavit filed by and on behalf of Respondent No.1, it does appear that there was no appropriate compliance with the

principles of natural justice, prior to making of the impugned order. Some of the appellants were neither informed nor heard before the impugned order was made. The statements of some of the appellants were recorded, however, there is no hearing granted to them before the impugned order came to be made. For want of compliance with the principles of natural justice, the impugned order is liable to be set aside. Therefore, rather than going into merits of the matter, it is appropriate if the impugned order is set aside on the ground that there was no proper opportunity granted to the appellants to put forth their case before the impugned order was made.

9 Respondent No.2 has now stated that he had never made any complaint in the matter. On this basis, the appellants naturally contend that no proceedings under Section 47 of the said Act are required to be undertaken. This submission cannot be accepted. If the complaint which is purportedly to be made by Respondent No.1 is perused, it is clear that it is not the same complaint with regard to any individual grievance of any person, but rather, it is a complaint which relates to administration of the trust. The proceedings under Section 47, cannot be permitted to be defeated by some party, simply stating that he has never made such complaint. In such matters, the messenger is not as important as the message itself. There is substance in the submission of Mr Dabke that the material on record, at least *prima facie*, is sufficient to initiate action under Section 41(D) of the said Act. The action under Section 41(D) of the said Act can be initiated either on the application of the trustee or any person

interested in the trust, or on receipt of the report under Section 41(d) of the said Act. No doubt, even before any action is initiated under Section 41(D) of the said Act, the principles of natural justice and fair play are required to be complied with. However, in the facts and circumstances of this case, it is open to the concerned authorities to initiate action under Section 41(D) of the said Act. Obviously, there can be no bar to the initiation of such an action. However, it is made clear that this Court has not expressed any opinion on merits of the matter, and therefore, all contentions of both parties are left open.

10 In the result, the impugned order is set aside. Respondent No.1, is however, given liberty to proceed with the action under Section 47 of the said Act or initiate action under Section 41(D) of the said Act, as the case may be, or to proceed with both such actions in accordance with law. It is made clear that the course, Respondent No.1 may choose to adopt, the same shall be proceeded with, having due regard to the provisions of the said Act and further having due regard to the principles of natural justice and fair play. The action is to be concluded within a period of three months from today.

11 The appellants to take cognizance of the proceedings and to file their reply within a period of two weeks from today without insisting of any fresh notice. For this purpose, the appellants to appear before Respondent No.1 on 17th April, 2017 at 3.00 p.m., on which date the appellants shall file their reply. The material on record before Respondent No.1 is already appended to the same. The appellants to

take cognizance of the same. The First Appeal is disposed of in the aforesaid terms. There shall be no order as to costs. In view of disposal of the First Appeal, the Civil Application does not survive and the same is disposed of accordingly.

(M. S. SONAK, J.)