

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.3249 OF 2016  
AND  
CIVIL APPLICATION NO.944 OF 2016  
AND  
CIVIL APPLICATION NO.3012 OF 2016  
IN  
FIRST APPEAL (ST.) NO.34086 OF 2015**

|                                                       |     |                     |
|-------------------------------------------------------|-----|---------------------|
| The Igatpuri Peoples Education And<br>Welfare Society | ... | Applicant/Appellant |
| Versus                                                |     |                     |
| Abdul Samad Nasivdar Khalifa<br>And Others            | ... | Respondents         |

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Mr. S.S. Karkera i/b Ashok S. Pandire for the Applicant/Appellant.  
Mr. Ameet Palkar, AGP for Respondent No.14.

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**CORAM : S.C.GUPTE, J.**

**DATE : 18 APRIL 2017**

**P.C. :**

. Civil Application No.3249 of 2016 is for leave to appeal. The Applicant/Appellant claims to be a charitable trust registered under the provisions of Bombay Public Trust Act, 1950 ("Act"), represented through its Secretary, Shaikh Ismail Fakir Mohd. The object of the trust is to run the educational activities of the trust. The Applicant/Appellant used to run an educational institute in the trust premises till the year 2002, when the school was closed for the work of repairs and renovation. On an application filed by the Respondents under Section 47 of the Act, the Joint

Charity Commissioner, Nasik Region, Nasik, has passed the impugned order appointing the Respondents as trustees of the Appellant trust. It is submitted by the Applicant/Appellant that there are existing trustees of the Appellant trust, whose names are recorded in the register of trusts. These trustees include the name of Shaikh Ismail Fakir Mohd. as secretary of the trust. It is submitted that the impugned order is passed on the footing that there are no de jure trustees of the trust. It is submitted that the order was passed in breach of sub-section (2) of Section 47 of the Act, inasmuch as no notice of removal of trustees or for appointment of new trustees was served on the existing trustees, including the secretary of the trust. It is submitted that it was incumbent upon the Respondents to have impleaded the existing trustees as party respondents before seeking any order under Section 47 of the Act.

2 The civil application has been duly served on Respondent Nos.1 to 13. The Respondents are absent despite service. There is no reply to the civil application.

3 Learned Counsel for the Applicant/Appellant has produced before me a copy of the extract of register of trusts, which shows the names of thirteen trustees, including Shaikh Ismail Fakir Mohd. as secretary of the Applicant/Appellant trust. The impugned order itself indicates that there was no opposite party in the application of the Respondents under Section 47 of the Act. *Prima facie*, this order is passed without giving any notice to the existing trustees, including the Secretary of the Applicant/Appellant Trust. In the premises, the civil application for leave to appeal deserves to be allowed. Accordingly, Civil Application No.3249 of 2016 is allowed in

terms of prayer clause-(a).

4 Civil Application No.944 of 2016 is for permitting the Applicant to implead as Appellant. This civil application practically makes no sense, since the Applicant herein has filed a separate civil application for leave to appeal as aggrieved party, which is disposed of in above terms. Civil Application No.944 of 2016 is, accordingly, dismissed.

5 Civil Application No.3012 of 2016 is for directions against Respondent Nos.1 to 13 for impleading the Appellant and other trustees as party respondents in the inquiry application. The inquiry application has already been disposed of by the Joint Charity Commissioner. The Applicant having come in appeal from that order, there is no question of considering this prayer. Accordingly, Civil application No.3012 of 2016 also dismissed.

6 Civil Application (St.) No.34087 of 2015, which is for condonation of delay and Civil Application (St.) No.34088 of 2015, which is for stay of the impugned order of the Joint Charity Commissioner, are not on board. These civil applications to come up for orders on 28 April 2017. The Applicant/Appellant to give a private notice of these applications and communicate the date of hearing to the Respondents and file an affidavit of service by the next date.

**(S.C. GUPTE, J.)**