

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No. 2681 /2016.

Girdhar Govinddasji Rathi

-VERSUS-

Anil Tichamchandji Hurkat and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : B.P. DHARMADHIKARI &
MRS. SWAPNA JOSHI, JJ.

DATE : JANUARY 16, 2017.

Heard Shri S.D. Abhyankar, learned
Counsel for the petitioner, Shri A. Thakare,
learned Counsel for respondent nos. 1 to 3, Shri
B.G. Kulkarni, learned Counsel for respondent
no.4, Shri N. Rao, learned A.G.P. for respondent
no.5 and Shri A.R. Bhise, learned Counsel for
respondent nos. 6,7 and 9.

2. Petitioner has made following prayers
in Section 41-A application -

“(1) *Direct the non-applicant no.1 and
3 not to interfere in the*

2

management and affairs of the trust namely, "Smt. Chuniyabai Rathī Maheshwar Panchayat Bhawan Trust, Hinganghat" bearing P.T.R. No. E-209 (W).

- (2) Direct the non-applicants no.1 to 3 not to deal with the properties (Movable and Immovable) of the trust in question in any manner.*
- (3) Direct the non-applicants no.2 to 3 not to operate the Bank amount of the trust in question with the non-applicant no.4.*
- (4) Direct the non-applicant no.4 not to allow the non-applicants to operate the bank account.*
- (5) Give ad-interim directions in respect of clause no. 1 to 3 during the pendency of this application.*
- (6) Any of the relief as deem fit in the facts and circumstances of this case."*

3. It appears that the application was earlier disposed of and petitioner approached this Court in Writ Petition No. 5809/2015. This Court on 15.01.2016, because of Division Bench judgment of this Court reported at 2012 (3)

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Mh.L.J. 594 (Vanmala Manoharrao Kamdi and others .vrs. Deputy Charity Commissioner Nagpur and others), placed back the controversy before respondent no.5 to consider the scope of Section 41-A of the Bombay Public Trust Act.

4. After this remand, impugned order has been passed on 25.04.2016. The Assistant Charity Commissioner has found that the present applicant has locus to move the application and the Assistant Charity Commissioner has also jurisdiction to issue prohibitory direction. However, the direction as sought for were found not necessary to ensure proper administration of the Trust.

5. After hearing the respective counsel we find that bare perusal of the prayer clauses mentioned supra, reveals factual absence of any powers and capacity with the petitioner. Respondents are operating Bank accounts and also are looking after the day to day affairs. In this situation, by invoking Section 41-A, petitioner cannot attempt to usher himself into

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administration or dislodge respondents.

Petitioner could have made appropriate prayers of adhoc nature to take care of the interest of the Trust. Those prayers are missing.

6. We therefore, find nothing wrong with the refusal of the Assistant Charity Commissioner to intervene in the matter. Hence, with liberty to petitioner to move appropriate application again on the same subject with respondent no.5, we dispose of the present petition. No costs.

JUDGE

JUDGE

Rgd.