IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9496 OF 2013

Samasta Dasa Mod Goghhava Panch,
Nandurbar and Ors. …. Petitioners

Versus

Biharibhai Gopalkrushna Pandya …. Respondent

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Mr. P. M. Shah, Senior Advocate i/by Mr. S. P. Shah, Advocate for the Petitioners.
Mr. A. S. Abhyankar, Advocate h/f Mr. S. V. Natu, Advocate for the Respondent-sole.

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CORAM : V. K. JADHAV, J.
RESERVED ON : 6TH MARCH, 2018
PRONOUNCED ON : 27TH MARCH, 2018

PER COURT:-

1. Heard finally with consent at admission stage.

2. Being aggrieved by the judgment and order dated 03.09.2012 passed in Civil Appeal No. 38 of 2010, the original applicants have preferred this Writ Petition.

3. Brief facts giving rise to the present Writ Petition are as follows:

a. The petitioner no. 1 is a public trust and the petitioner nos. 2 and 3 are the trustees and office bearers of petitioner no.1-public trust. The petitioner no.1-public trust owns CTS No. 37 at Nandurbar alongwith other properties. In CTS No. 37, there is a temple of God Shriram. The said Temple is on the ground floor and the priest of the temple is allowed to occupy the first floor of the building for his residence. The respondent was working as a Pujari at the said temple belonging to the petitioner-trust. He was permitted to occupy the premises in the temple for his residence. The dispute relates to this premises which is occupied by the respondent.

b. The petitioners had filed Application No. 5 of 2009 against the respondent under Sections 41E, 41A, 41B and 41 of the Maharashtra Public Trusts Act, 1950 (for short, "Act of 1950") for issuance of injunction order restraining the respondent to enter into, use and occupy the suit portion which is the first floor portion of the temple of God Shriram situated in CTS No. 37 of Nandurbar and further directions under Sections 41A and 41E of the Act of 1950 to the respondent to hand over vacant possession of the suit portion. The petitioners also claimed for damages from the respondent for his wrongful and illegal occupation and user of the suit portion since 01.09.2008 at the rate of Rs.3,000/- per month with periodical increase as detailed in prayer clause (C) of the Petition.

c. The learned Joint Charity Commissioner, by the judgment and order dated 04.10.2010 in Application No. 5 of 2009, has restrained the respondent from misusing and damaging the immovable property of the trust and further directed the respondent to vacate the trust premises occupied by him immediately and if failed to vacate the premises, the applicants (petitioners herein) shall take recourse of law and recover damages at the rate of Rs.3,000/- per month from the date of this order and the same shall be increased by Rs.1,000/- per month till vacating the premises.

d. Being aggrieved by the same, the respondent herein has preferred Civil Appeal No. 38 of 2010 before District Court, Nandurbar and the learned District Judge-1, Nandurbar, by the impugned judgment and order dated 03.09.2012, allowed the Appeal with costs and quashed and set aside the order passed by the Joint Charity Commissioner dated 04.10.2010 in Application No. 5 of 2009 and further rejected Application No. 5 of 2009. Hence this Writ Petition.

4. Mr. P.M. Shah, learned senior counsel for the petitioners submits that the learned District Judge has failed to appreciate the provisions of Sections 41A and 41E of the Act of 1950 and the interpretation put up by the learned District Judge is unsustainable in law. The mandate of provisions of Section 41A empowers the Commissioner to issue directions for proper administration of the trust to any trustees of a public trust or any person connected therewith, to ensure that the trust is properly administered, and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust. The provision of Section 41A also empowers the Charity Commissioner to give directions to the trustees or such person if he finds that any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of. In terms of the provisions of Section 41E of the Act of 1950, the Charity Commissioner may, by order, grant temporary injunction or make such order for the

purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of such property, on such terms as to the duration of injunction. The learned senior counsel submits that the aforesaid provision empowers the Joint Charity Commissioner to direct eviction of the premises and payment of damages. The petitioner-trust has provided the facility of residence to the respondent so as to enable him to render his services properly. Thus, the respondent is a person connected with the trust in that capacity and considering the property belonging to the petitioner trust, it was all the more necessary to issue directions for vacating the premises in terms of the provisions of Sections 41A and 41E of the Act of 1950. The learned senior counsel submits that no rent, occupation charges, license fees or any other charges have been taken from the respondent and as such, he was neither the lessee nor a licensee. The facility of occupation of the first floor was attached to his services to be offered by him and as soon as those services discontinued, the facility of occupation stood withdrawn. The petitioner-trust and the trustees found that the services rendered by the respondent were not satisfactory and when the respondent was called in the meeting to explain it on

12.07.2008, the respondent himself expressed that he wanted to discontinue his services and further assured that he would leave the temple premises by 31.07.2008. His resignation was also accepted. Though he had applied on 17.07.2008 to restore his services as Pujari, his request was not allowed by the trustees. The respondent was given time till 31.08.2008 for vacating the premises and it was made clear to him that he would not be paid the honourarium from 01.09.2008. The respondent did not vacate the suit property which is the residential portion on the first floor of the temple. It is the duty of the trust to maintain the temple and serve the idols and to make necessary arrangements for the same. The learned senior counsel submits that the Joint Charity Commissioner went through the affidavits, written arguments of both parties and after hearing the submissions, observed that the facility of residence was attached to the services to be rendered by the respondent and once the services were discontinued, the respondent was required to vacate the suit premises. The learned Joint Commissioner has also observed that after discontinuation of service, the residence of respondent on the first floor of the temple is unauthorized residence and as such, the suit property is in danger of being wasted or damaged.

The learned Joint Charity Commissioner has therefore rightly exercised jurisdiction under Sections 41A and 41E of the Act of 1950 and passed the appropriate orders. However, the learned District Judge, by mis-interpreting the provisions of Sections 41A and 41E, allowed the appeal. The learned senior counsel submits that in terms of the provisions of Section 41A, the Charity Commissioner may pass any other appropriate order including direction for vacating the premises.

5. The learned senior counsel, in order to substantiate his submissions, placed reliance on the case of ***Murlidhar s/o Janrao Kale and others vs State of Maharashtra and others,*** reported in ***2011 (1) Mh.L.J. 849***.

6. Mr. Abhyankar, learned counsel for the respondent submits that application of the provisions of Sections 41A and 41E of the Act of 1950 to the facts of the present case is wholly irrelevant and misconceived. In no case direction for vacating the premises could be prayed for and issued under the provisions of Section 41E read with Section 41A of the Act of 1950. The learned counsel submits that directions under the provisions of Section

41A can be given for proper administration of the trust to ensure that the income of the trust is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust and further, directions can also be given to the trustees or such person if he finds that the property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of. The word “such person” essentially mean the person as defined in Section 2(8) of the Act of 1950 which includes manager (other than trustees), in case of a *math*, the head of such *math,* in case of a wakf, the *mutawalli* of such wakf and in case of a society registered under the Societies Registration Act, 1860, its governing body, whether or not the property of the society is vested in a trustee. The learned counsel submits that in the instant case, the dispute is between the trustees and the Pujari whose services were discontinued. There is no case of improper administration of the trust. There is no case that the income of the trust was not properly accounted or duly appropriated to the objects or for the purposes of the trust. The learned counsel submits that in terms of the provisions of Section 50(ii), the petitioner-trust can recover possession from the respondent even if the status of the respondent is assumed as a trespasser. However, application of the provisions of Section 41E read with Section 41A of the Act of 1950 is uncalled and unwanted. The Joint Charity Commissioner cannot pass a decree of eviction or otherwise pass a decree of recovery of possession under the garb of the provisions of Section 41E read with Section 41A of the Act of 1950. The learned counsel submits that the learned District Judge has therefore rightly allowed the appeal. There is no substance in the Writ Petition and the Writ Petition is thus liable to be dismissed.

7. The learned counsel for the respondent, in order to substantiate his contentions, placed reliance on the following cases:

1. ***Laxmidas Morarji (D) by L.Rs vs Miss Behrose Darab Madan,*** reported in ***AIR 2009 SC (Supp) 2711,***

2. ***Dattatraya s/o Mahadeo Hiware and others vs Arjun s/o Sambhaji Shinde and others***, reported in ***2007 (1) Mh.L.J. 48***,

3. ***Sheikh Husain s/o Haji Abdul Rahim Patel deceased through his Lrs. Abdul Aziz s/o Haji***

Rehim and others vs. Mohammad Sarver s/o Mohammad Husain and another, reported in ***2007 (4) Mh.L.J. 817***,

4. ***Krishna Ram Mahale (Dead) by his Lrs. vs. Mrs. Shobha Venkat Rao**, reported in* **1989 (3) Bom.C.R. 364**,

5. ***Metro Marins and Anr. vs. Bonus Watch Co. Pvt. Ltd. and Ors.***, reported in ***2004 SAR (Civil) 875,***

6. ***Misrilal Misra vs. M/s. Ikram Husein & Co.***, reported in ***1977 BLR (Vol. LXXX) 659***,

7. ***Shantinath S. Ghongade vs. Rajmal Uttamchand Gugale***, reported in ***1978 BLR (Vol. LXXX)671,***

8. ***Kisanrao Madhavrao Bartakke vs. Narayan Dhondi Shete***, reported in ***1978 BLR (Vol. LXXX)676,***

9. ***Vinayaka Dev Idagunji and Ors. vs. Shivaram and Ors.,*** reported in ***2005 SAR (Civil) 673*** and

10. ***Lahudas Sambhaji Karad vs. The State of Maharashtra and others***, reported in ***1993 (2) Mh.L.J. 1056.***

8. On careful perusal of the contents of Application No. 5 of 2009 and the orders passed by the courts below and after considering the provisions of Section 41E read with Section 41A of the Act of 1950, I agree with the observation made by the learned District Judge that application of the provisions of Section 41E read with Section 41A of the Act of 1950 to the instant case would be misconceived and irrelevant.

9. Section 41A of the Act of 1950 deals with the power of the Charity Commissioner to issue directions for proper administration of the trust and Section 41E of the said Act deals with the power of the Charity Commissioner for protection of the charities. Sections 41A and 41E of the Act of 1950 read as under:

> "**41A.** (1) Subject to the provisions of this Act, the Charity Commissioner may from time to time issue directions to any trustee of a public trust or any person connected therewith, to ensure that the trust is properly administered, and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust; and the Charity Commissioner may also give directions to the trustees or such person that if he

finds any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of.

(2) It shall be the duty of every trustee or of such person to comply with the directions issued under sub-section (1)."

"**41E.** (1) Where it is brought to the notice of the Charity Commissioner either by the Deputy or Assistant Charity Commissioner through his report or by an application by at least two persons having interest supported by affidavit,-

(a) that any trust property is in danger of being wasted, damaged or improperly alienated by any trustee or any other person, or

(b) that the trustee or such person threatens, or intends to remove or dispose of that property,

the Charity Commissioner may by order grant a temporary injunction or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of such property, on such terms as to the duration of injunction, keeping an account, giving security, production of the property or otherwise as he thinks fit.

(2) The Charity Commissioner shall in all such cases, except where it appears that the object of granting injunction would be defeated by delay, before granting an injunction, give notice of the facts brought to his notice to the trustee, or the person concerned.

(3) After hearing the trustee or person concerned and holding such inquiry as he thinks fit, the Charity Commissioner may confirm, discharge or vary or set aside the order of injunction or pass any other appropriate order.

(4) In case of disobedience or breach of any injunction, any of its terms or any order passed under this section, the Charity Commissioner may apply to the Court, which may, after hearing the Charity Commissioner and the party affected, order the property of such person, guilty of such disobedience or breach to be attached and may also order such person to be detained in jail for a term not exceeding six months. No attachment under this sub-section shall remain in force for more than one year, at the end of which time, if the disobedience or breach

continues, the property attached may be sold, and out of the proceeds, the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the person entitled thereto, and thereupon, the temporary injunction granted, or any order passed, by the Charity Commissioner, under this section, if in force shall stand vacated, or as the case may be cancelled.

(5) A trustee or a person against whom the order of injunction or any other order under this section is passed may, within ninety days of the date of communication of such order, appeal to the Court against such order.

(6) The order of the Court attaching the property of such person or detaining such person in civil prison shall be a decree appealable to the High Court.

(7) The order of the charity Commissioner shall, subject to any order of the court or in appeal, be final."

10. In terms of the provisions of Section 41A of the Act of 1950, directions can be issued only against the trustees or the person connected with the trust. In terms of Sub-section (2) of Section 41A, it shall be the duty of every trustee or of such

person to comply with the directions issued under Sub-section (1). In my considered opinion, essentially, Section 41A empowers the Commissioner to issue directions to a person of a trust who is holding some sort of authority in connection with administration of the trust. Even looking to the nature of the directions as contemplated under the provisions of Section 41A, the phrase “any person connected therewith” refers to a person/persons as defined under Section 2(8) of the Act of 1950 which includes manager (other than a trustee), in the case of a *math*, the head of such *math*, in the case of a wakf, a *mutawalli* of such wakf and in case of a society registered under the Societies Registration Act, 1860, its governing body, whether or not the property of the society is vested in a trustee. In the instant case, there is no issue of proper administration of the trust and the income of the trust whether properly accounted for or duly appropriated and applied to the objects. In terms of the provisions of Section 41A, the Charity Commissioner may also give directions if he finds that any property of a trust is in danger or being wasted, damaged, alienated or wrongfully sold, removed or disposed of. By any stretch of imagination, it cannot be inferred that the petitioner/trust's property is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of. Even assuming that wrongful continuation of occupation of the trust premises by the respondent would amount to danger to the property of the trust of being wasted, damaged etc., however, that does not empower the Charity Commissioner to pass a decree of eviction and the proper recourse would be the provisions of Section 50(ii) of the Act of 1950 of institution of a suit for recovery of possession even assuming the occupation of the premises on the part of the respondent would be as of a trespasser.

11. In the case of ***Murlidhar s/o Janrao Kale and others vs State of Maharashtra and others*** (supra) relied upon by the learned senior counsel appearing for the petitioners, the Division Bench of this Court, in para 12 of the judgment, has made the following observations:

> " ***12.*** *From perusal of the provision of section 41-A of the Bombay Public Trusts Act, we find that the Charity Commissioner is empowered to issue directions to any trustee or a person connected therewith to ensure that the trust is properly administered. Since schools, colleges and institutions are run by public trusts, it follows that any such directions will ensure that they are properly administered either during the pendency of disputed change reports or as the case may be. We, therefore, hold that an order under section 41-A of the Bombay Public Trusts Act can be passed to direct or recognise a trustee/trustees/Board of Trustees or the persons connected with the trust whose names are either entered or not entered in the P.T. Register maintained under section 17 of the Act, pending disputes between them or even otherwise. We, however,*

do not agree with the proposition stated in judgment dated 28-8-1999 in First Appeal No. 354/1998, that 'somebody' other than whose name is to be found in P.T. Register can be empowered under section 41-A of the Bombay Public Trusts Act. Section 41-A of the Bombay Public Trusts Act speaks of only 'trustees' or the 'persons connected therewith' and not 'somebody'. It is also not possible to agree with the statement that in the absence of any order under section 41-A of the Bombay Public Trusts Act, only those persons whose names are entered in the register can continue to manage the affairs of the trust. It is a matter of common experience that persons shown as trustees in the register i.e. Schedule-I under Rule 5 of the Bombay Public Trusts Rules, 1951 are shown to exist as trustees even though their tenure/term as trustees as indicated in the bye-laws, memorandum of association or Rules or regulations had come to an end years back or such names are hardly one or two or who are unable to run the trust for one or the other reason. Therefore, merely because names of such persons whose names exist in Schedule-I and whose term had expired or for any other reason they cannot function as trustees or fresh elections have been held under a particular fact situation, such trustees alone would not be entitled to continue to manage the affairs of the Trust. In our opinion, each case will have to be decided on the facts, *materials and evidence available on record and by applying the law. The change reports in respect of elections, filling up of vacancies of trustees, schemes are filed with the Assistant Charity Commissioner and every endeavour should be made by the Assistant Charity Commissioner to decide such change reports expeditiously and in case of any dispute amongst the trustees, power under section 41-A of the Bombay Public Trusts Act can be invoked either suo motu by the Assistant Charity Commissioner or on application of the trustees or the persons connected with the Trust or the Education or other authority for isssuance of directions in the matter of administration of the Trust and its institutions. In the case in hand, the Deputy Director of Education ought to have directed the parties before him to either get the change reports decided one way or the other or get directions under section 41-A of the Bombay Public Trusts Act as to the persons/trustees authorized to manage the Trust and its institutions."*

In the case cited above, following two questions were involved for consideration:

"(i) Who is the authority to decide which trustee or a board of trustee or groups of trustees or persons connected with the trust are entitled to administer the

Trust, its institutions or schools or colleges and whether the Deputy Director of Education or any other Education Authority will have jurisdiction to decide such issue or authorize the trustees or board of trustees or group of trustees to look after the administration of the schools run by a Trust pending disposal of the change reports before the Assistant Charity Commissioner or even in case of dispute?

(ii) Whether there is any power with the Deputy Director of Education or any other Education Authority or the Education Officer to withdraw the administrative or financial powers of head of the institutions/schools and authorize any other or senior most teacher from the same school and if so, in what circumstances?"

12. It thus appears that the scope of the provisions of Section 41A of the Act of 1950 is discussed in a different context. The facts of the instant case are altogether different and as such, the observations made by the Division Bench in para 12 as aforesaid cannot be made applicable to the facts and circumstances of the present case in any manner.

13. Clause (ii) of Section 50 of the Act of 1950, which is relevant for the present discussion, is only reproduced herein below:

> "**50.** In any case,-
> (i) ……
> (ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property or proceeds from a trustee, ex-trustee, alienee, trespasser or any other person including a person holding adversely to the public trust but not a tenant or licensee,
> (iii) ……
> (iv) ……
> the Charity commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in section 51 may institute a suit whether contentions or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs ……"

14. Section 50 of the Act of 1950 creates and regulates a right to institute a suit by the trust with prior permission of the Charity Commissioner to recover possession of the trust property from any other person, including a person holding the suit property adversely to the public trust and even from a trespasser. It would be hazardous if the authorities under the provisions of the Act of 1950 start exercising powers of the Civil Court to pass a decree of eviction under the garb of the provisions of Section 41E read with Section 41A of the Act of 1950. In terms of the provisions of Section 41E of the said Act, the Charity Commissioner is empowered to grant temporary injunction or to make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of such trust property, however, in any case, the injunctions, whether perpetual or temporary, the courts would be concerned with the position as on the date of institution of the suit and it is only to maintain that position or *status quo* that injunction can be granted pending disposal of the suit. In the instant cast, even assuming that the Joint Charity Commissioner has rightly exercised the powers as contemplated under Section 41E of the

Act of 1950, the order directing eviction or in other sense, recovery of possession, is beyond jurisdiction of the learned Joint Charity Commissioner. The learned District Judge has therefore rightly allowed the appeal. There is no substance in the Writ Petition. Hence the following order:

The Writ Petition is hereby dismissed. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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