

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

963 WRIT PETITION NO. 7045 OF 2018
WITH CA/9385/2018 IN WP/7045/2018

CHANDRAKANT BABURAO BHOPI
VERSUS
THE ASSISTANT CHARITY COMMISSIONER 2 NANDED

Advocate for Petitioners : ...
Mr. V.J.Dixit, Senior Advocate i/b
Mr. Sangeet L.V.

**CORAM : S.V.GANGAPURWALA
AND
SUNIL K.KOTWAL, JJ.**

DATE : AUGUST 8, 2018

O R D E R :

The suo motu proceedings are initiated by the learned Assistant Charity Commissioner, Nanded Region, Nanded under Section 41-A of the Maharashtra Public Trust Act. Same is assailed in the present Writ Petition.

2. Mr. V.J.Dixit, learned Senior counsel for the petitioner submits that the complaint is entertained by the learned Assistant Charity Commissioner lodged on web portal. According to learned Senior counsel, the complaint cannot be entertained in respect of those

matters which are sub judice and of religious nature.
as per the Government Resolution, dated 24.8.2016.

3. Learned Senior counsel further submits that Clause 29 of the scheme is not implemented. To substantiate his contention, learned Senior counsel relies on the observations in para 243 of the order, dated 14.7.2014 in Application Nos. 1/1984, 1/1992 and 9/2002 filed under Section 50A(1) of the Maharashtra Public Trust Act.

4. Learned Senior counsel further submits that even the President of the Trust has filed say saying that Clause 29 of the scheme is never implemented. The amount is not being collected by Pujaris.

5. Learned Senior counsel further submits that appeals are pending against the order framing the scheme, so also two Writ Petitions are pending. In such an eventuality, learned Assistant Charity

Commissioner could not have taken cognizance of the complaint nor could have entertained it.

6. Learned Senior counsel further submits that jurisdiction even as per Clause 37 of the scheme is with the Assistant Charity Commissioner at Aurangabad. Assistant Charity Commissioner, Nanded does not have any jurisdiction to deal with the same.

7. Learned Senior counsel further submits that though the proceedings are styled as suo motu, they are in fact initiated on the basis of the complaint.

8. Learned Senior counsel further submits that 41-A proceedings could not have been entertained by the Assistant Charity Commissioner, Nanded. The show cause notice issued itself is on the basis of wrong premise.

9. We have also heard learned AGP and Mr. Dighe, learned counsel for respondents.

10. From the order, it appears that the proceedings under Section 41-A of the Maharashtra Public Trust Act are initiated suo motu by the authority. The matter is sub judice before the authority. All these contentions raised by learned Senior counsel for the petitioner in the present matter can be agitated before the Assistant Charity Commissioner, Nanded where the proceedings are pending. Needless to state, when all these contentions are raised, the authority is required to consider the said contentions on its own merits and thereafter decide the proceedings. Passing any order would be preempting the decision on the part of the Assistant Charity Commissioner, which is normally to be avoided.

11. Considering the fact that when the matter is sub judice before the Assistant Charity Commissioner, we are not inclined to exercise our jurisdiction and give liberty to the petitioner to raise these issues before the learned Assistant Charity Commissioner.

12. As far as the order rejecting the application for cross-examination of some persons is concerned, it appears that no examination-in-chief is conducted. Unless there is examination-in-chief, normally cross-examination is not permitted.

13. Writ Petition is accordingly disposed of with afore said observations. No costs.

14. In view of disposal of Writ Petition, Civil Application is disposed of.

[**SUNIL K.KOTWAL, J.**] [**S.V.GANGAPURWALA, J.**]

dbm