

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

**WRIT PETITION NO. 13149 OF 2017**

Shivaji Jagannath Thanka  
and others

.. Petitioners

**Versus**

Mangaldas Nandlal Bhavare  
and others

.. Respondents

Shri S. P. Brahme, Advocate for Petitioners.

Shri Pawan B. Pawar, Advocate for Respondent Nos. 1 to 5.

**CORAM : S. V. GANGAPURWALA AND  
A. M. DHAVAL, JJ.**

**DATE : 27TH APRIL, 2018.**

**FINAL ORDER :**

. The petition is filed challenging the order dated 20th April, 2017 passed by the Assistant Charity Commissioner, Dhule in Enquiry Application No. 395 of 2017 and 415 of 2017 to the extent of findings recorded in para No. 15 and clause Nos. 3 to 6 of the operative part of the judgment.

2. Mr. Brahme, the learned counsel for petitioners submits that, the authority to sign the bank account of the trust is given to the respondent No. 1 and the inspector of the office of the Charity Commissioner Shri Sandip Jadhav. The petitioners have

no objection as far as signature of the person of office of the Charity Commissioner is concerned. The respondent No. 1 is facing criminal prosecution and also charges are framed against him U/Sec. 41-D of the Maharashtra Public Trust Act. The account would not be safely operated by the respondent No. 1. A person who is tainted cannot be allowed to operate the account.

3. Mr. Pawar, the learned counsel for respondents submits that, the resolution has been passed in the year 2013 authorizing the respondent No. 1 to operate the bank accounts. The petitioners were present in the said meeting and were party to the said resolution. As far as criminal prosecution is concerned, the respondent No. 1 has not received any notice, though it is contended that, the petitioners have filed private complaint against the respondent No. 1. It is the petitioners who are guilty of transferring the trust property and the respondent No. 1 has taken objection to the same.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. The charges U/Sec. 41-D of the Trust Act have been framed against both the parties. The charge reports filed by both the parties are pending before the Assistant Charity Commissioner. When the charges are framed against particular party, it would

not be appropriate to allow a party against whom charges are framed U/Sec. 41-D of the Trust Act to operate the account.

6. In fact, when the Assistant Charity Commissioner has already framed charges against the respondent No. 1, it was inappropriate for the Assistant Charity Commissioner to allow the respondent No. 1 to operate the account of the trust.

7. The resolution is of the month of September 2013 and the charges U/Sec. 41-D of the Trust Act have been framed subsequently. Considering the said aspect of the matter, it would be appropriate for the Assistant Charity Commissioner to authorize a member of the trust against whom no charges are pending along with the inspector of the office of the Assistant Charity Commissioner to operate the account of the trust.

8. In the light of the above, we pass following order.

9. The Assistant Charity Commissioner, Dhule shall direct operation of the account of the trust by inspector of the office of the Assistant Charity Commissioner, Dhule and one member/trustee of the trust against whom no charges are framed and pending. The same shall be done within a period of fifteen (15) days from today. The impugned order to the extent of authorizing the respondent No. 1 to operate the account of the

trust is set aside. The writ petition is accordingly disposed of.  
No costs.

**[A. M. DHAVAL, J.]**

**[S. V. GANGAPURWALA, J.]**

bsb/April 18