

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 1073 OF 2017
WITH
CIVIL APPLICATION NO. 2997 OF 2017
IN
FIRST APPEAL NO. 1073 OF 2017**

Shree Khandoba Devatalinga
Kadepathar, Jejuri & Ors.

...Appellants

Versus

Dattu Kisan Shedge & Anr.

... Respondents

.....

Mr. A.V. Anturkar, Senior Advocate i/b. Mr. Amol Gatne for the
Appellants

Mr. A.R. Patil, AGP for the Respondent no. 2/State.

.....

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **FEBRUARY 13, 2018**

P.C.:

1. This First Appeal is directed against the order dated 13.07.2017 passed by the learned Joint Charity Commissioner, Pune in Application No. 25 of 2016 passed under Section 47 of the Bombay Public Trust Act, 1950 (hereinafter referred to as "the said Act"). By

the said order, the learned Joint Charity Commissioner has declared all the trustees of Trust viz. Shree Khandoba Devatalinga Kadepathar, Jejuri as disqualified and has appointed Mr. N.V. Jagtap, Assistant Charity Commissioner, Pune as an Administrator. The said trust is a registered charitable trust.

2. At this stage, the Appeal is not decided on merits, but the issue of technicality and observance of the principles of natural justice is only considered.

3. Earlier, one Dattu Kishan Shedge has filed a complaint with the Office of the Charity Commissioner in respect of working of the said Devasthan. By the order dated 11.04.2016, the learned Joint Charity Commissioner had allowed the Application No. 25 of 2016 and disqualified all the trustees and had appointed one Mr. N.V. Jagtap, Assistant Charity Commissioner as an Administrator. The said order was challenged in First Appeal No. 1052 of 2016 before this Court. The main ground of challenge was that the complainant Dattu Shedge has filed affidavit before this Court pending Appeal, and has stated that he did not give any complaint to the Office of the Charity Commissioner against working of the said Devasthan. He

denied the authorship of the Application No. 25 of 2016. While deciding the said Application, the learned Joint Charity Commissioner did not give an opportunity to the then trustees to put their say and, therefore, this Court by its order dated 04.04.2017 had remanded the matter to the learned Joint Charity Commissioner for fresh inquiry. Thereafter, the learned Joint Charity Commissioner again tried and heard the Application No. 25 of 2016 and again allowed the said Application by order dated 13.07.2017. Hence, this First Appeal.

4. The learned Senior Advocate for the appellants has raised an objection that though the Application has been withdrawn by Dattu Shedge and this Court had directed the learned Joint Charity Commissioner to try and decide the matter under Section 41(D) of the said Act, the matter was tried and decided under Section 47 of the said Act. He has submitted that the procedure followed by the learned Joint Charity Commissioner was not correct, as the procedure laid down under Sections 41 (D) and 47 of the said Act is different and hence, the matter is to be again remanded to the learned Joint Charity Commissioner.

5. The learned AGP for respondent no. 2/State has supported the

order dated 13.07.2017 passed by the learned Joint Charity Commissioner. He has submitted that as per the order passed by this Court, the learned Joint Charity Commissioner was bound to follow the procedure laid down under Section 47 of the said Act. This Court had ordered that the said complaint is to be considered as a basis of the inquiry. Therefore, the Application No. 25 of 2016 was taken on record and inquiry was initiated under Section 47 of the said Act. He has further submitted that the inquiry under Section 47 of the said Act was very much within the directions given by this Court and, therefore, the objection taken by the appellants is not correct. There is no need to remand this matter and the First Appeal be dismissed. In support of his submission, he relied on paragraph nos. 8, 9 and 10 of the order dated 04.04.2017 of this Court. He has further submitted that the learned Joint Charity Commissioner in his impugned order has specifically mentioned that the notices were sent to all the trustees and the opportunity was given to them to make submission. In view of this, the order passed by the learned Joint Charity Commissioner cannot be faulted with and no ground is made out to remand the matter.

6. Heard submissions. Perused the impugned order and also

perused the order dated 04.04.2017 passed by this Court. Under Section 47 of the said Act, any person interested in a public trust may apply to the Charity Commissioner for the appointment of a new trustee or for the suspension, removal or discharge of a trustee. However, under Section 41 (D) of the said Act, the Charity Commissioner on receipt of a report under section 41B or on the basis of any application may suspend, remove or dismiss. In the order dated 04.04.2017, this Court has observed that though the complainant has stated that he has not made any complaint and he has withdrawn from the authorship of the complaint i.e., Application No. 25 of 2016, the contents of the complaint are still on record and the learned Joint Charity Commissioner was directed to take up the proceedings by following procedure either under Section 41D or under Section 47 of the said Act or under both the Sections as per the facts and circumstances of the case.

7. The learned Joint Charity Commissioner had conducted further inquiry under the same Application i.e., Application No. 25 of 2016, which was made under Section 47 of the said Act. The learned Joint Charity Commissioner gave notices to all the trustees and also gave audience to the trustees who come forward, recorded the statements

and passed the order. In the result, it was the same order of disqualifying the trustees and the appointment of Administrator. After considering the submissions of both the sides and carefully going through the impugned order and also the order passed by this Court, this Court had directed the learned Joint Charity Commissioner to take into account and follow the procedure laid down under Section 41D of the said Act and hence, it was the obvious reason of withdrawal of the complaint by the complainant Dattu Shedge. When the complainant has affirmed that he did not file any such application making allegations on the trustees and working of the trust, he has not come forward to assert his case. Therefore, the learned Joint Charity Commissioner has naturally derived his knowledge in respect of mismanagement of working of the trust from the said complaint. The learned Joint Charity Commissioner is expected to proceed suo motu. Thus, the procedure followed by the learned Joint Charity Commissioner is to be taken under Section 41D of the said Act. If again the steps are taken by the learned Joint Charity Commissioner under Section 41D of the said Act, then the learned Joint Charity Commissioner is required to follow further procedure laid down under sub-sections 2, 3 and 4 of Section 41D of the said Act. Sub-sections 2, 3 and 4 of

Section 41D of the said Act are reproduced as under: -

“When the Charity Commissioner proposes to take action under subsection

(2) he shall frame charges against the trustee or the person against whom action is proposed to be taken and give him an opportunity of meeting such charges of testing the evidence adduced against him and of adducing evidence in his favour. The order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge, with the reasons therefor.

(3) Pending disposal of the charges framed against a trustee the Charity Commissioner may place the trustee under suspension.

(4) Where the Charity Commissioner has made an order suspending, removing or dismissing any trustee and such trustee is the sole trustee or where there are more than one trustee and the remaining trustee according to the instrument of trust, cannot function or administer the trust without the vacancy being filled, then in that case the Charity Commissioner shall appoint a fit person to discharge the duties and perform the function of the trust, and such person shall hold office only until a trustee is duly appointed according to the provisions of the instrument of trust”.

Thus, the learned Joint Charity Commissioner is directed to follow the procedure laid down under Section 41D of the said Act, especially to frame the charges and to give opportunity to adduce evidence to the appellants etc.

8. To avoid confusion, it is also made clear that the learned Joint Charity Commissioner after concluding the inquiry under Section 41D of the said Act may take recourse of Section 47 of the said Act to appoint a new trustee if he wants. Thus, the order of this Court directing the learned Joint Charity Commissioner to take recourse of both the Sections, if required can be complied with. Hence, the matter is remanded to the learned Joint Charity Commissioner. Parties to appear before the learned Joint Charity Commissioner on 26th February, 2018 at 11.00 a.m. and shall co-operate the learned Joint Charity Commissioner. The learned Joint Charity Commissioner shall proceed with the matter. It is made clear that the statements and evidence recorded by the learned Joint Charity Commissioner and which is adduced by both the parties, if any, can be used in this proceeding, as it is a continuation of the proceeding. If the learned Joint Charity Commissioner thinks fit to record additional evidence and also the statement, then he can proceed with the same. Hence, I set aside the order dated 13.07.2017 passed by the learned Joint Charity Commissioner, Pune. The learned Joint Charity Commissioner to expedite the matter, hear and conclude the same till 31st March, 2018.

9. With this, First Appeal is disposed of as remanded.

10. In view of disposal of First Appeal, Civil Application does not survive and the same is accordingly disposed of.

(MRIDULA BHATKAR, J.)