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

Civil Application No. 07861 of 2019
(In First Appeal No. 0997 of 2019)

District : Osmanabad

1. Sagar s/o. Satish Bodhale,
   Age : 24 years,
   Occupation : Agriculture,
   R/o. Dhamangaon,
   Taluka Barshi,
   Dist. Solapur.

2. Harshwardhan s/o. Harishchandra
   Bodhale,
   Age : 37 years,
   Occupation : Legal Practitioner
   & Agriculture,
   R/o. Borgaon Zadi,
   Taluka Barshi,
   Dist. Solapur.

.. Applicants (Respondents No.2 & 3 in Appeal)

versus

1. Vithoji s/o. Bhausaheb Bodhale,
   Age : 65 years,
   Occupation : Agriculture,
   R/o. Vakav, Taluka Mhada,
   Dist. Solapur.

2. Vivekanand s/o. Bhausaheb Bodhale,
   Age : 50 years,
   Occupation : Agriculture,
   R/o. Dhamangaon,
   Taluka Barshi,
   Dist. Solapur.

3. Shri Sant Mankoji Maharaj,
   Bodhale Trust, Dhamangaon (D),
   Taluka Barshi, Dist. Solapur.

4. Jt. Charity Commissioner,
   Latur Region, Latur.

.. Respondents (Nos.1 to 3 - Original appellants & No.4 - Respondent no.1 in Appeal)

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Mr. Nitin Jagdale, Advocate, holding for Mr. V.D. Salunke, Advocate, for the applicants.

Mr. R.N. Dhorde, Senior Advocate, instructed by Mr. V.R. Dhorde, Advocate, for respondents no.01 to 03.

Mr. P.M. Kulkarni, Assistant Government Pleader, for respondent no.04.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 11TH JULY 2019

ORDER :

01. Present application has been filed by respondents no.02 and 03 in First Appeal No. 997 of 2019 for giving directions to respondent no.04 - Joint Charity Commissioner, Latur Region, Latur, to appoint Inspector in the trust i.e. Shri Sant Mankoji Maharaj Bodhale Trust, Dhamangaon (D), Taluka Barshi, District Solapur, during the period of *Aashadhi Ekadashi* to *Aashadhi Pournima* i.e. 11-07-2019 to 17-07-2019, to collect donation and deposit the same in the bank account of the Trust.

02. The applicants have come with a case, that they are the original applicants before the Joint Charity Commissioner, Latur Region, Latur, in Enquiry No. 61/2015 under Section 41E of the Maharashtra Public Trusts Act, 1950 **[For short, "MPT Act"].** It is contended that taking into consideration the

difficulties faced in the administration of the Trust, learned Joint Charity Commissioner appointed Administrator to look after affairs of the Trust by its order dated 27-02-2019. It is stated that the original appellants were not the trustees. However, illegally interfered in the Trust and have intention to grab the donations received through temple as well as agricultural income of the Trust. They have filed the said appeal before this Court. It is stated that the Trust was established in the year 1972 and the constitution of the same has been approved. The nature of the Trust is by way of hereditary. The elder son of the trustee would be chief trustee. One Bhausaheb Bodhale had formed the said Trust and since many years, he was the main trustee. He filed application Enquiry No. 978/2010 seeking change in Clause 5 of the constitution of the Trust. However, during pendency of the said enquiry, he expired on 04-01-2012. The present appellant no.01 has submitted his affidavit on 12-04-2012 stating that he suffers from high blood pressure and may not be eligible to manage the Trust. Therefore, he resigned from the said post. The said application allowing him to resign was rejected and therefore, appellant no.01 filed revision under Section 70A of the MPT Act. It came to be allowed directing to submit amendment as per Section 50A of the said Act to the Assistant Charity Commissioner. The present applicants have filed MCA No.116 of 2016 before

District Court, Osmanabad and it is still pending. However, in the meantime, the appellant himself filed Change Report No.332 of 2013 in Revision Petition No. 20 of 2016 before Assistant Charity Commissioner, Osmanabad, to record his name as chief trustee in place Bhausaheb Bodhale as per Section 5 of the MPT Act. The said enquiry report has not been accepted by learned Assistant Charity Commissioner till today. It is stated that though that change report is still pending, appellant filed Revision Petition bearing No. 20 of 2016 in which the present applicants appeared *suo motu* claiming to be interested in the affairs of the Trust.

03. The present applicants filed Enquiry No.61/2015 under Section 41E of the MPT Act on the ground that appellant no.01 is not functioning as a trustee but appellant no.02 Vivekanand Bodhale is illegally acting as a trustee. Huge property is with the Trust and, therefore, there is question of managing the affairs of the property. During pendency of the enquiry report, learned Joint Charity Commissioner appointed Shri Pawar, Inspector from office of Osmanabad, to make enquiry and submit report. A detailed enquiry was made and report has been submitted on 26-09-2018. It is contended that the Joint Charity Commissioner had appointed the Inspector to collect donations and to main accounts. The intention is to protect the interest of the

Trust. Challenging the order regarding appointment of Administrator, in the appeal, appellants have obtained *ex parte* stay. Since the festival of *Aashadhi Ekadashi* is on 12-07-2019, thousands of devotees will visit the temple and there would be huge collection. The appellants are thereby trying to grab the said amount. In fact, Inspector has been appointed since 2015 and he has deposited the amount so collected in the bank account of the Trust. The applicants have prayed that similar arrangement be made now for this year also.

04. Present application has been strongly objected by respondents no.01 to 03, on the ground that the order that was passed by the learned Joint Charity Commissioner, appointing Inspector for a particular work would amount to appointing a receiver which cannot be allowed. Reliance has been placed on the decision in *Raghunath Vyankatrao Phadnis & others Vs. Sayyad Mahamood Sayyad Nizamoddin & others* [2003(1) Bom.C.R. 807] wherein it has been held that the Commissioner is empowered to give directions to the trustees under Section 41A of the MPT Act (then Bombay Public Trusts Act) but he cannot appoint a receiver for that purpose and what he cannot do by a final order cannot do by interim order. Similar view has been taken in *Ramrao s/o. Shankarrao Kavthale Vs. Vijaykumar s/o. Bhuprao Shete & others* [2004(2) ALL MR 211]. However, in this case, it is in respect of appointing a new committee or *ad hoc*

committee to manage the trust affairs. It was also contended that since the Administrator could not have been appointed by the learned Joint Charity Commissioner, they have filed the appeal. They had not challenged the orders passed since 2015 for the simple reason that they were interested in getting result in the enquiry report finally. Learned Advocate for the respondents also submitted that though such appointments were made from 2015, they were illegal; that illegality cannot be continued merely because it suits one party.

05. As aforesaid, heard learned Advocate Mr. Nitin h/f. learned Advocate Mr. V.D. Salunke for the applicants. Heard learned Senior Advocate Mr. R.N. Dhorde i/b. learned Advocate Mr. V.R. Dhorde for respondents no.01 to 03. So also, heard learned AGP Mr. P.M. Kulkarni appearing for respondent no.04.

06. It will not be out of place to mention here, that the learned Advocate appearing for the applicants has produced on record the orders those were passed by the learned Joint Charity Commissioner appointing the Inspector to collect the donations and deposit it with the bank account of the Trust. He was also directed to make enquiry on the point as to how much is the income of the Trust, how the funds so realized are utilized and who is in possession of the property of the Trust. It is stated that since

Aashadhi Ekadashi is scheduled and there would be *Utsav* / festival, huge devotees would come to the temple of the Trust and therefore, interest of the Trust property is required to be protected by giving similar orders which were passed since 2015.

07. Per contra, by relying upon those decisions; learned Senior Advocate submitted that the orders, on which the applicants are relying, have been passed without jurisdiction by the learned Joint Charity Commissioner. Therefore, it cannot be allowed to continue.

08. It is to be noted that the enquiry report which has been decided by the Joint Charity Commissioner, Latur Division, Latur, was on the basis of application under Section 41E of the MPT Act. The said section provides that *"When the fact is brought to its notice of the Charity Commissioner, either by the Deputy or Assistant Charity Commissioner, that the trust property is in danger of being wasted, damaged or improperly alienated by any trustee or any other person, or that the trustee or such person threatens or intends to remove or dispose of that property, then temporary injunction can be granted 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."* That means, when it is so proved that the property is

being wasted, damaged, improperly alienated, etc., powers under Section 41E of the MPT Act can be exercised. Here, it appears that when the Inspector was appointed for the first time by order dated 22-07-2015, it was tried to be submitted that appointment of such person is necessary for better utilization and to avoid misappropriation of funds. Thereafter, in the next year, similar order was passed on 14-07-2016. Now, the position stands that the learned Joint Charity Commissioner has appointed Administrator on the Trust. This Court, while dealing with stay application, has observed that submission was made, that if the charge of the Trust is taken by Administrator, the purpose behind filing of the first appeal would be frustrated and therefore, impugned order was stayed. Though it is an interim order that had been passed, yet, it appears that by this application, original respondents no.02 and 03 are praying for Inspector to be appointed for collecting the donations, etc.

09. This Court in *Raghunath Vyankatrao Phadnis & others (supra)* has clearly come to the conclusion that under Section 41A of the MPT Act, Charity Commissioner is empowered to give directions to trustees, but he cannot appoint a receiver and cannot do any such act at interim stage which he cannot do at the time of final order. If the report of the Inspector is perused, then it can be seen that he is acting as

receiver. It was not clarified in the application as to under which provisions of law Inspector could be appointed for collecting the donations, etc. The reference of Section 41A has been made by the learned Joint Charity Commissioner while passing order on 22-07-2015. That means, he intended to use his powers under Section 41A of the MPT Act. In an appeal wherein the order on the application under Section 41E is challenged, it cannot be done as per the above said ruling. A back door entry cannot be allowed under the guise of order being passed under Section 41A of the MPT Act to appoint Inspector for collecting the donations. The similar view that has been taken in *Ramrao Kavthale's case (supra)* is also applicable here. Under such circumstance, no merit can be found in the application. It deserves to be rejected.

10. Hence, the following order :-

The civil application is hereby rejected. There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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