

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14360 OF 2018

Jagganath Narhari Khose
& others

Petitioners

Versus

The State of Maharashtra
& others

Respondent

Mr. B.A. Dhengle, Advocate for the petitioners.

Mrs. M.A. Deshpande, AGP for respondents no. 1 to 3.

CORAM : M.S. KARNIK, J.

DATE : 9th August, 2019.

PER COURT :

1. Heard learned counsel for the petitioners and learned AGP for respondents no. 1 to 3. None appears for respondents no. 4 to 14 though they are duly served.

2. Learned counsel for the petitioners invited my attention to the application made by respondents no. 4 to 14 under Section 41E r/w Rule 25(AA) of the Maharashtra Public Trust Act, 1950 and Rules 1951, seeking injunction and restraining the petitioners herein (original respondents) from interfering in the management of the trust. The Joint Charity Commissioner, by the impugned order, appointed an Administrator.

3. Learned counsel for the petitioners has pointed out that while considering the application made by the present respondents no. 4 to 14, the Joint Charity Commissioner came to the

conclusion that injunction cannot be granted as the question of danger to the trust property does not arise within the contemplation of Section 41E of the Act. Learned counsel for the petitioners would further submit that recourse available for the Joint Charity Commissioner in that case was to reject the application made by respondents no. 4 to 14. However, the Joint Charity Commissioner, by issuing the impugned directions and appointing Administrator, has virtually passed an order which is not subject matter of the application made by respondents no. 4 to 14. For this purpose he would invite my attention to paragraph no. 9 of the order. Learned counsel would submit that in any event, even if some remedial measures were to be taken by the Joint Charity Commissioner for the welfare of the trust, then petitioners ought to have been heard before appointment of the Administrator. There is some substance in the contention of the learned counsel for the petitioners. In any case, respondent nos. 4 to 14 have not appeared to contest the petition.

4. In view of this, the matter is remitted back to the Joint Charity Commissioner to hear the petitioners on the point as to whether it is necessary to appoint the Administrator and then to pass appropriate order. Even respondents no. 4 to 14 may be heard, if they appear. Petitioners to inform respondents no. 4 to 14 about the directions issued by this Court.

5. Learned counsel for the petitioners states that the petitioners would appear before the Joint Charity Commissioner on 23.08.2019 at 11.00 am. After hearing the petitioners, the Joint Charity Commissioner to pass an appropriate order in accordance

with law, within a period of six weeks from the date of appearance of the parties.

6. As the challenge in this petition is limited to appointing an administrator, no doubt the Charity Commissioner can take remedial measures for the welfare of the Trust, but while so doing, as the said order is being passed in an application made under Section 41-E of the Act, it would be appropriate to hear the parties before appointing an Administrator in the facts of the present case. The impugned order, only to the extent of appointment of Administrator, is set aside. Considering that the Administrator is already appointed and has taken charge, till fresh order is passed, the Administrator to continue.

7. Writ petition stands disposed of in above terms.

(M.S. KARNIK, J.)

dyb/