

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 139 OF 2019

Mohan Dagadu Daundkar & Ors.

....Petitioners

V/s.

Joint Charity Commissioner, Pune Region,
Pune & Ors.

....Respondents

Mr. S.S. Patwardhan I/b. Mr. Mandar Bagkar for the petitioners.

Mrs. Preeti Walimbe for respondent nos.3, 5 and 7.

Mr. Y.D. Patil, AGP for respondent nos.1 and 8.

Mr. Shriram Kulkarni for respondent nos.2, 4 and 6.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 07th JANUARY, 2019.**

P.C.:

. Rule. With consent, rule made returnable forthwith, petition is taken up for final hearing.

2. By this petition, filed under Article 227 of the Constitution of India, the petitioners have challenged the legality of order dated 26.12.2018 passed by the learned Joint Charity Commissioner, Pune Region, Pune in Application No.01/2018 (Exhibit – 9) for initiating action under the provisions of Section 41D of Maharashtra Public Trust Act, 1950.

3. The petitioners are the trustees of public trust namely “ Shri

Yamai Devi Trust ", Kanersar, Tal. Khed, Dist. Pune. The respondent nos.2 to 7 have filed an application [copy of which is at Exhibit – 'H', page no.54 before the Joint Charity Commissioner] alleging that as per the inspector's report, the trustees have misappropriated the Trust funds and have committed several other illegalities. The respondent nos.2 to 7 therefore sought action against the petitioners under Section 41(D) of the Maharashtra Public Trusts Act, 1950. The petitioners filed their reply to the show cause notice and disputed having misappropriated the Trust funds. By the impugned order dated 26/12/2018, the learned Joint Charity Commissioner, Pune Region, Pune allowed the application filed by the respondent nos.2 to 4 and suspended the present petitioners till the decision of the proceedings under Section 41(D) of Maharashtra Public Trust Act, 1950. Being aggrieved by the order of suspension, the petitioners have filed this Writ Petition under Article 227 of the Constitution of India.

4. Heard Mr. S.S. Patwardhan, learned counsel for the petitioner, Ms. Preeti Walimbe, learned counsel for respondent nos.3, 5 and 7, Mr. Y.D. Patil, learned AGP for respondent nos.1 and 8 and Mr. Shriram Kulkarni, learned counsel for respondent nos.2, 4 and 6. I have perused the records and considered the submissions advanced by the

learned counsels for the respective parties.

5. It would be relevant to reproduce Section 41(D) of the Maharashtra Public Trust Act since in the present case, the Joint Charity Commissioner has suspended the petitioners by taking recourse to sub-section 2 of Section 41(d). Sub-section 1, 2 and 3 of the said section reads thus :-

“(1) The Charity Commissioner may, either on application of a trustee or any person interested in the trust, or on receipt of a report under section 41B or suo motu may suspend, remove or dismiss any trustee of a public trust, if he, –

(a) makes persistent default in the submission of accounts report or return ;

(b) wilfully disobeys any lawful orders issued by the Charity Commissioner under the provisions of this Act or rules made thereunder by the State Government;

(c) continuously neglects his duty or commits any malfeasance or misfeasance, or breach of trust in respect of the trust;

(d) misappropriates or deals improperly with the properties of the trust of which he is a trustee; or

(e) accepts any position in relation to the trust which is inconsistent with his position as a trustee ;

(f) if convicted of an offence involving moral turpitude.

(2) When the Charity Commissioner proposes to take action under sub-section (1), 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. ”

6. In the instant case, the respondent no.1 had filed an application (Exhibit – 9) for action against the petitioner for misappropriating the Trust fund. The allegations in the application at Exhibit – 9 are based on the inspector's report. In paragraph 10 of the impugned order, the learned Joint Charity Commissioner has observed that the allegations made in the inspector's report are yet to be proved. It is thus evident that the petitioners have not been suspended for committing any of the acts alleged in the inspector's report.

7. It is to be noted that by order dated 25/01/2016, the Joint Charity Commissioner had restrained the petitioners from taking any

major decisions and withdrawing the amount of more than Rs.10,000/- on any expenditure except salary till the decision of Change Report No.569/2015 and if the petitioners needed more funds of the said trust on any expenditure more than Rs.10,000/- they were to seek permission of Id. Assistant Charity Commissioner, Pune. The learned Joint Charity Commissioner has observed that the petitioners have incurred expenditure of Rs.17,68,645/- during the period from 10/10/2018 to 18/10/2018. The learned Joint Charity Commissioner observed that the petitioners had not sought permission for incurring the expenditure in excess of Rs.10,000/- and suspended the petitioners for committing breach of order dated 25/01/2016.

8. The learned Joint Charity Commissioner has suspended the petitioners without giving them opportunity of being heard as regards expenditure incurred during 10/10/2018 to 18/10/2018 in breach of the order dated 25/01/2016. The impugned order is passed in breach of principles of natural justice and on this ground alone, the impugned order cannot be sustained.

9. Under the circumstances and in view of the discussion supra, the Writ Petition is allowed. The impugned order dated 26/12/2018 is set

aside. It is however made clear that this Court has not gone into the merits of the matter and the respondent no.1 – Joint Charity Commissioner is at liberty to give show cause notice to the petitioners as regards the expenditure incurred subsequent to filing of the application at Exhibit – 9 and decide the matter on its own merits after hearing the petitioners as well as all other concerned parties.

10. In the event, the learned Joint Charity Commissioner proposes to take any action against the petitioners, the same shall be concluded as expeditiously as possible and in any event within a period of two months from the date of uploading of this order.

11. Writ Petition stands disposed of accordingly.

(SMT. ANUJA PRABHUDESSAI, J.)