

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

**CIVIL APPLICATION NO. 4076 OF 2018
IN
FIRST APPEAL NO. 1166 OF 2018**

Brahmanath Puratan Digambar
Jain Mandir Trust, Kunjwan, & ors.Applicants
V/s.
Tavangonda Satgonda Patil & ors.Respondents

Mr. S.C. Naidu I/b. Mr. Tejpal S. Ingale for the appellants/applicants.
Mr. S.S. Patwardhan a/w. Mr. Mandar Bagkar a/w. Mr. Chetan
G. Patil for respondent nos.1 to 3.
Ms. Tanaya Goswami, AGP for respondent no.7.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 25th JUNE, 2019.**

P.C. :-

. By this application, the applicants herein seeks stay of implementation and execution of the impugned judgment and order dated 31/01/2018 passed by the learned Joint Charity Commissioner, Kolhapur in Application No.5/2011 under section 41-D of Maharashtra Public Trust Act, 1950 which reads thus :-

“ Pending the hearing and final disposal of this First Appeal, the execution, operation and effect of the impugned Judgment and Order dated 31.01.2018 passed by Ld. Joint Charity Commissioner, Kolhapur in Application No.05/2011 filed u/s. 41-D of the Maharashtra Public Trust Act, 1950, be kindly stayed ;

2. By the impugned order, the learned Joint Charity Commissioner

has allowed the application under Section 41(d) and has disqualified the appellant nos.2 to 8 and respondent nos.4, 5 and 6 and one Mr. Suresh Babu Chougule.

3. Heard Mr. S.C. Naidu, learned counsel for the appellants/applicants and Mr. S.S. Patwardhan, Mr. Mandar Bagkar and Mr. Chetan G. Patil, learned counsel for respondent nos.1 to 3. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

4. The appellant no.1 is a religious charitable public trust registered under the provisions of Maharashtra Public Trust Act, 1950. The appellant nos.2 to 8 and respondent nos.4, 5 and 6 are the trustees of appellant no.1- Trust. The defendant no.1-Trust was formed and established by the members of Jain Community. The members of the Jain Community had appointed the Board of Trustees for the management of the trust. The appellant nos.2 to 8 and respondent nos.4, 5 and 6 are the board of trustees duly appointed under the scheme framed pursuant to the order dated 14/03/2001. The object of the trust is to worship the Deity, maintain the temple by carrying out day to day pooja and perform other religious ceremonies, social

functions, etc. The trust also runs primary school of english medium.

5. The respondent nos.1 to 3 who were also the members of Jain Community had filed an application before the learned Joint Charity Commissioner for removal of the Board of Trustees and its office bearers on the ground of persistent default in submission of accounts, negligence, malfeasance and misfeasance. The learned Charity Commissioner has held that the appellant – Trustees had not submitted the audit report in time and that they had constructed the school without obtaining prior permission. They had carried out repairs / reconstruction without inviting tenders. In short, they had not discharged their duties as per the Act and Rules. The learned Joint Charity Commissioner, therefore, disqualified the appellant nos.2 to 8 and respondent nos.4, 5 and 6 as Trustees of the appellant / Trust. The Charity Commissioner also directed the Inspector, Asif Shaikh to look after the administration of the Trust, pending the election and appointment of Board of Trustees.

6. Relying upon the decision of this Court in *Mallikarjuanappa s/o. Sidramappa Bidve and ors. V/s. Joint Charity Commissioner, Maharashtra State, Mumbai and ors. 2008(1) Mh.L.J.148*, Mr. S.C.

Naidu, the learned counsel for the applicants/appellants contends that malfeasance and misfeasance is a serious charge and that unless the lapse on the part of the trustees is proved to be actuated by dishonesty or active connivance with other trustees, who are guilty of misfeasance or malfeasance, the drastic action under Section 41-D of the BPT Act, is not warranted.

7. Mr. S.C. Naidu, learned counsel for the applicants has also relied upon the decision in *Santoshkumar s/o. Nandkishor Pande v/s. Vinaykumar s/o. Sattyanarayan Mishra 2013(1) Mh.L.J.*, wherein the Single Judge of this Court has held that it is not the every lapse or every act of misconduct, which invites the punishment of dismissal or disqualification of trustees. It is further held that the punishment has to be proportionate to the gravity of the charge. The learned counsel for the appellant further states that since respondent nos.4, 5 and 6 have ceased to be Trustees, steps to be taken to fill up the vacant posts of the Board of Trustees of the Appellant No.1 – Trust and further that the Trustees shall rectify the defect / irregularity, if any.

8. Mr. S.S. Patwardhan, learned counsel for respondent nos.1 to 3 submits that the appellants / trustees have been negligent in

submitting the audit reports. He further contends that the trust is running the school without obtaining permission from the concerned authority. He further submits that the appellants / trustees have failed to deposit the money in the nationalized bank as required under the rules. The Trust has encroached upon the Government land and has also carried out repairs without inviting tenders. He submits that the learned Charity Commissioner has dealt with all the charges leveled against the appellant nos.2 to 8 and has held them guilty of malfeasance and misfeasance. He further submits that pursuant to the order of the Charity Commissioner and the order dated 22/02/2018, the Administrator has already taken charge and hence, the appellants / trustees cannot be permitted to administer or manage the appellant no.1-Trust.

9. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

10. Before adverting to the facts, it would be relevant to refer to the decision of this Court in *Mallikarjuanappa s/o. Sidramappa Bidve (supra)*, wherein it has been held thus :-

“ 18. The legal position, which may be kept at back of the mind, is that removal of a trustee is a drastic action. The charge of malfeasance and/or misfeasance is serious one. The proceedings are of quasi civil and quasi criminal nature. Though the proceedings under Section 41D is not criminal proceeding as such, yet, proof required to sustain the charges is of high standard. The standard of proof in such proceedings is some what more than normally required in cases governed by preponderance of probabilities and some what less than required in trials of criminal cases. The degree of proof required in criminal case is such that would prove criminal charge beyond a reasonable realm of doubt. The imputation reflecting on integrity of trustees have to be fortified by proof of high degree which would be somewhere in between standard of proof required in civil proceedings like a suit and criminal proceedings like a trial for offence of criminal breach of trust, or that of cheating. Thus, unless the lapse on part of the trustee is proved to be actuated by dishonesty or active connivance with other trustees, who are guilty of misfeasance or malfeasance, the drastic action under Section 41-D of the BPT Act, may not be warranted.

19. The expression "misfeasance" as used in Clause (c) of Section 41-D would imply commission of breach of trust. It is more than mere negligence of the trustee to perform his duty. "Misfeasance" includes breach of duty by the trustee which would result into loss to the trust or would cause unlawful gain to such a trustee, charged with act of misfeasance..... ”

11. In the instant case, the learned Charity Commissioner has observed that the Trust had to bear costs for late submissions of the audit reports. These findings are not borne out from the records. It is pertinent to note that the imputations levelled against the applicants –

Trustees mainly relate to negligence and non performance of duties / non administration of trust as per the Act and the Rules. There are no allegations of wrongful or unlawful gain to the trustees and/or loss to the trust. There is no prima facie material to indicate that the lapse on the part of the applicants was actuated with dishonesty. Hence, in my prima facie view, the drastic action of disqualification is not proportionate to the nature of the charge levelled.

12. The appeal is of the year 2018. Considering the heavy pendency, the appeal is not likely to come up for final hearing at least in the next couple of years. Hence, it would not be in the interest of the Appellant – Trust to continue with the ad-interim arrangement made vide order dated 31/01/2018 and 22/02/2018. Hence, the following interim order :-

(a) The impugned judgment and order dated 31/01/2018 is stayed pending the hearing and disposal of the appeal.

(b) The Administrator appointed under the impugned order shall hand over charge of the Appellant No.1 – Trust to the Appellant Nos.2 to 8.

(c) The Appellant Nos.2 to 8 shall administer and discharge duties as trustees of Appellant No.1 – Trust as per the Act, Rules and Scheme framed in respect of management and administration of Appellant No.1-Trust

(d) The Trustees to take steps to fill up the vacant posts on Board of Trustees within 60 days from the date of uploading of this order.

(e) The Board of Trustees shall hold its first meeting within 15 days from the date of declaration of results of the election to elect among themselves the office bearers of the Trust, who shall function and administer duties as per the Act, Rules and the Scheme.

13. The learned counsel for respondent nos.1 to 3 prays that the implementation of this order be stayed for a period of four weeks. Implementation of order is stayed for a period of four weeks from the date of uploading of this order.

14. Civil Application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)