

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

**FIRST APPEAL NO. 999 OF 2018
WITH
CIVIL APPLICATION NO. 1451 OF 2018
IN
FIRST APPEAL NO. 999 OF 2018**

Sahebrao Kautik Pawar and anr.Appellants
V/s.
Kamalbai Shivaji Pawar and anr.Respondents

Mr. Jagdish G. Reddy-Aradwad for the appellants.
Mr. N.R. Bubna for respondent nos.2 and 3.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 02nd AUGUST, 2019**

P.C.:-

. With consent of the parties, the appeal is heard finally at the stage of admission.

2. The appellants have challenged clause 4 of the operative part of the impugned judgment and order dated 30/12/2017 in P.T.R.No.F-1909/Nashik in Inquiry Application No.10 of 2012 filed under Section 41D of Maharashtra Public Trusts Act, 1950 whereby the learned Commissioner has prevented the appellants from participating in election of Managing Committee for next 10 years.

3. Heard Mr.Jagdish G. Reddy-Aradwad, learned counsel for the appellants and Mr. N.R. Bubna, learned counsel for respondent nos.2 and 3. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

4. The appellants herein had filed an application under Section 41D of Maharashtra Public Trust Act, 1950 for removal of trustees on the ground of malfeasance and misfeasance committed by them in administration of Navjeevan Shikshan Sanstha, Warhane, Taluka Malegaon, District Nashik registered public trust under P.T.R.No.F-1909/Nashik. The learned Joint Charity Commissioner has partly allowed the said application and removed the respondent no.1 as trustee and prevented him from participating in the election of Managing Committee for a period of six years under Section 41D(1)(a) and (c) of the M.P.T. Act, 1950. The learned Joint Charity Commissioner has further observed that the appellant and respondent no.1 are jointly responsible for the lapses during the period from 1987 to 2003. The learned Joint Charity Commissioner has observed that the interest of the Trust needs to be protected and hence prevented the appellant herein from participating in the election of Managing Committee for the next 10 years.

5. Mr.Jagdish G. Reddy-Aradwad, learned counsel for the appellants contends that the Charity Commissioner had not issued notice to the appellants before proceeding to take such a drastic action against him. Mr. N.R. Bubna, learned counsel for the respondent nos.2 and 3 concedes that the Charity Commissioner has not framed charges and not complied with sub-section 2(a) of Section 41D and that no opportunity was given to the appellant to submit his reply.

6. The records thus indicate that the learned Charity Commissioner has passed the order against the appellant without complying with the mandatory provisions contained in Section 41D of the Act. Such order is patently arbitrary and ex-facie bad and illegal and hence, cannot be sustained.

7. Under the circumstances, following order is passed :-

(a) The appeal is allowed.

(b) Clause 4 of the operative part of the impugned order dated 30/12/2017 is set aside.

(c) The matter is remanded to the Joint Charity Commissioner,

Nashik Region, Nashik with directions to comply with the mandatory provisions of Section 41D of Maharashtra Public Trust Act, 1950.

(d) Both parties are directed to appear before the Joint Charity Commissioner, Nashik on 29/08/2019 at 11:00 a.m.

(e) The learned Joint Charity Commissioner shall take the decision within a period of eight weeks from the date of appearance of the parties.

8. Civil Application stands disposed of in view of disposal of the appeal.

Preeti H.
Jayani

Digitally signed by
Preeti H. Jayani
Date: 2019.08.27
18:40:31 +0530

(SMT. ANUJA PRABHUDESSAI, J.)