

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

**WRIT PETITION NO.7095 OF 2019**

Maharashtra Vidyarthi Sahayak  
Mandal, Pune and ors. ... Petitioners  
V/s.

Shri Suresh Deshmukh and ors. ... Respondents

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Mr.A.V.Anturkar, Senior Advocate with Mr.Ajinkya M.  
Udane for the Petitioners.  
Mr.Siddhartha R. Ronghe for Respondent Nos. 1 and 2.  
Mr. S.H.Kankal, AGP for Respondent No.3.

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**CORAM : UJJAL BHUYAN, J.**  
**DATE : OCTOBER 10, 2019.**

**P.C.:-**

1. Heard Mr.A.V.Anturkar, learned senior counsel assisted by Mr.Ajinkya Udane, learned counsel for the petitioners; Mr.S.R.Ronghe, learned counsel has appeared on behalf of respondent Nos.1 and 2 by filing caveat; and Mr.S.H.Kankal, learned AGP, Maharashtra for respondent No.3.

2. Challenge made in this writ petition filed under

Articles 226 and 227 of the Constitution of India is to the legality and validity of the order dated 5<sup>th</sup> May, 2018 passed by the Learned Joint Charity Commissioner, Pune Region, Pune on application filed by respondent Nos.1 and 2 under Section 41E of the Maharashtra Public Trust Act, 1950.

3. From the impugned order itself, it is evident that respondent Nos.1 and 2 had filed the related application contending that petitioner No.1-society which is registered under the Maharashtra Public Trust Act, 1950 as well as under the Societies Registration Act, 1860 has not been managed properly by petitioner Nos. 2 to 12. In addition to that, allegations were made that since the year 1982 when petitioner No.1 came to be established, no Annual General Meeting was held till the year 2013-14. Therefore, prayer was made for restraining the petitioners from managing the affairs of petitioner No.1-society till final decision on the application filed under Section 41E was taken by the learned Joint Charity Commissioner.

4. Petitioners who were arrayed as opponents in the said application contested the claim of respondent Nos.1 and 2.

5. After hearing the matter, learned Joint Charity Commissioner passed the impugned order dated 5<sup>th</sup> May, 2018 restraining petitioner Nos.2 to 12 from taking any policy decision/final decision till disposal of the main application. It is this order which is under challenge in the present writ petition.

6. Mr.Anturkar, learned senior counsel for the petitioners has referred to Section 41E of the Maharashtra Public Trust Act, 1950 ("1950 Act" hereafter) and contends that the Charity Commissioner has jurisdiction to grant temporary injunction regarding immovable property of the Trust, provided he arrives at the satisfaction that such property is in danger of being wasted, damaged and improperly alienated by any trustee or such trustee threatens or intends to remove

or dispose of such property. He submits that no such finding of fact was recorded by the Joint Charity Commissioner. In the absence of recording of such finding, the Joint Charity Commissioner could not have assumed jurisdiction under Section 41E of the 1950 Act. That apart, interim injunction granted by the Joint Charity Commissioner is beyond the scope and ambit of Section 41E. He has also pointed out to the findings recorded by the Joint Charity Commissioner to contend that learned Joint Charity Commissioner did not consider the fact that constitution of petitioner No.1-society was amended, whereby tenure of the Managing Committee was extended from one year to five years.

7. On the other hand, Mr.Ronghe, learned counsel for respondent Nos.1 and 2 submits that the heading of Section 41E clearly reveals that the Joint Charity Commissioner has the power to act for protection of charities. The contents of the section would have to be interpreted keeping in mind the objective of the section as reflected in the section heading. He has also referred

to various averments made in his application to point out that the Trust property was in danger of being improperly alienated by the trustees and therefore, filing of the application under Section 41E was fully justified. That apart, he also submits that the main prayer in the application was to restrain petitioner Nos.2 to 12 from carrying out any administrative activity of the Trust in the capacity of trustees. Further submission is that impugned order dated 5<sup>th</sup> May, 2018 is only an ad-interim order operating for more than one and half years now. Hearing of the main application is fixed on 19<sup>th</sup> December, 2019. At this stage, interference with the interim order dated 5<sup>th</sup> May, 2018 would not be justified.

8. Learned Assistant Government Pleader while supporting the submissions of Mr.Ronghe further submits that the tenure of petitioner Nos.2 to 12 had expired in August, 2019. Therefore, there is no live issue involved for adjudication as agitated in the writ petition.

9. In his reply Mr.Anturkar, learned senior counsel for the petitioners submits that Annual General Meeting has already been held in August, 2019, in which petitioner Nos.2 to 12 have been elected. Change Report have been submitted before the Assistant Charity Commissioner which is pending.

10. Submissions made by learned counsel for the parties have been considered.

11. For better appreciation, Section 41E of the 1950 Act may be adverted to, which is extracted hereunder:-

“(l) Where it is brought to the notice of the Charity Commissioner either by the Deputy or Assistant Charity Commissioner through his report or by an application by at least two persons having interest supported by affidavit,—  
(a) that any trust property is in danger of being wasted, damaged or improperly alienated by any trustee or any other person, or  
(b) that the trustee or such person threatens, or intends to remove or dispose of that property, Charity Commissioner may by order grant a temporary injunction 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.

(2) The Charity Commissioner shall in all such cases, except where it appears that the object of granting injunction would be defeated by delay, before granting an injunction, give notice of the facts brought to his notice to the trustee, or the person concerned.

(3) After hearing the trustee or person concerned and holding such inquiry as he thinks fit, the Charity Commissioner may confirm, discharge or vary or set aside the order of injunction or pass any appropriate order.

(4) In case of disobedience or breach of any injunction, any of its terms or any order passed under this section, the Charity Commissioner may apply to the Court, which may, after hearing the Charity Commissioner and the party affected, order the property of such person, guilty of such disobedience or breach to be attached, and may also order such person to be detained in jail for a term not exceeding six months. No attachment under this sub-section shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds, the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the person entitled thereto, and thereupon, the temporary injunction granted, or any order passed, by the Charity Commissioner, under this section, if in force shall stand vacated, or as the case may be, cancelled.

(5) A trustee or a person against whom the order of injunction or any other order under this section is passed may, within ninety days of the date of communication of each order, appeal to the Court against such order.

(6) The order of the Court attaching the property of such person or detaining such person in civil prison shall be a decree appealable to the High Court.

(7) The order of the Charity Commissioner shall, subject to any order of the Court or in appeal, be final.

12. A perusal of Section 41E as extracted above would go to show that if it is brought to the notice of the

Charity Commissioner either by the subordinate authorities through a report or by an application by atleast two persons having interest which is supported by an affidavit to the effect that any trust property is in danger of being wasted, damaged or improperly alienated by any trustee or by any other person or that the trustee or such person threatens or intends to remove or dispose of the property, then the Charity Commissioner may pass an order of temporary injunction to stay and prevent wasting, damaging, alienating, sale, removal or disposition of such property on such terms as to the duration of injunction etc.

13. It is trite that while interpreting the provisions of a statute, the plain language of the statute has to be given pre-eminence. When the language of the statute is clear and unambiguous, purposive interpretation has to be eschewed. In such a scenario, taking the aid of marginal notes to understand and interpret the provisions contained in the statute would not become necessary. As a matter of fact, Supreme Court has held

that marginal notes cannot be referred to for the purpose of construing the statute. Marginal note cannot certainly control the meaning of the body of the section if the language employed therein is clear.

14. Going by the plain language of Section 41E, it is evident that when it comes to the notice of the Charity Commissioner in either of the two ways as provided that any trust property is in danger of being wasted, damaged or improperly alienated by any trustee or by any other person or such trustee or person threatens or intends to remove or dispose of that property, the Charity Commissioner gets the jurisdiction to grant a temporary injunction to prevent wastage, damage, alienation, sale, removal or disposition of such property.

15. Having noticed the requirement of law as above, the interim injunction granted by the learned Joint Charity Commissioner on 5<sup>th</sup> May, 2018 may now be adverted to which is extracted hereunder:-

“The opponent Nos.2 to 13 are hereby

restrained from taking any policy decisions/ financial decisions by way of interim injunction in respect of opponent No.1 trust without permission of this Authority excluding the statutory payments till the disposal of main application.”

16. Evidently, restraining petitioner Nos.2 to 12 from taking any policy decision or financial decision in respect of the trust is not contemplated under Section 41E of the 1950 Act. *Prima-facie*, such an order is clearly beyond jurisdiction. If an order is beyond jurisdiction, the fact that it is in operation for more than one year and half would not clothe it with any legitimacy.

17. Considering the above, court is of the view that impugned order dated 5<sup>th</sup> May, 2018 is legally untenable and cannot be sustained. Consequently, the same is hereby set aside and quashed.

18. Writ petition is accordingly allowed but without any order as to costs.

**(UJJAL BHUYAN, J.)**