IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO. 220 OF 2019

Rupchand Gulasa Walli (Jain) and another
vs.
Adityakumar Hukumchand Walli (Jaina) and others

Office Notes, Office Memorandum of Coram, Court's or Judge's orders
appearances, Court's orders of directions
and Registrar's orders

Shri. S. V. Sirpurkar and Suyash Agrawal, counsel for appellants.
Shri. V. K. Paliwal, counsel for respondents.

CORAM : Manish Pitale J
DATED : 30.09.2019

By this appeal, the appellants (original applicants) have challenged judgment and order dated 16.11.2017 passed by the Joint Charity Commissioner Amravati whereby application filed by the appellants under Section 41-D of the Maharashtra Public Trusts Act 1950 for removal of the respondents as trustees of Saydwad Education Society, has been dismissed.

2. The appellants made several allegations against the respondents seeking their removal from trusteeship. The learned counsel appearing for the appellants emphasized on the allegation levelled against the respondents that they had purchased four

school buses by obtaining loan from bank, in the absence of obtaining permission from the Charity Commissioner for taking such loan and further that the respondents did not file change report taking entry of the said four school buses in Schedule - ‘I’ of the P.T. Register. According to the appellants this action of the respondents was sufficient to throw them out of the trust.

3. The Joint Charity Commissioner in the impugned judgment and order has noted that the applicants nowhere contended regarding the said allegations against the respondents in their application and there was no such charge levelled against respondents when the said application under Section 41-D of the aforesaid Act was filed. It was found that only in cross-examination statement was made by respondent No.1, admitting that the permission from the Charity Commissioner was not obtained before taking loan for purchasing the four school buses. The change report as stated above was not filed. In this regard explaination was given by the respondents by stating that they were under an impression that since the school buses were being purchased for the school, permission was not required from the Charity Commissioner and change report was also not to be filed. The Joint Charity Commissioner also found that the respondents had shown amounts collected on account of bus fare in income and expenditure statement, in the audit

report, thereby demonstrating their bonafides in the matter. In this situation, the Joint Charity Commissioner was of the opinion that, the respondents could not be removed as trustees under Section 41-D of the aforesaid Act and instead a direction was given to the Assistant Charity Commissioner to inquire into the aforesaid aspect of loan being obtained for purchasing four school buses without alleged permission of the Charity Commissioner and to take suitable action against the respondents, if required.

4. Although the learned counsel appearing for the appellants vehemently contended that the admissions given in the cross-examination were sufficient to nail the guilt of the respondents making them liable to be removed from trusteeship. This Court is of the opinion that the Joint Charity Commissioner adopted a correct approach in directing inquiring into the matter by the Assistant Charity Commissioner, particularly in view of the explanation sought to be given by the respondents and the fact that they had kept account of income and expenditure pertaining to fare collection from such school buses, which were ultimately meant for students of the school run by the trust. This Court does not find any error committed by the Joint Charity Commissioner in that regard.

5. The other aspect sought to be relied upon

by the learned counsel for the appellant was that there was material to show that the respondents had unnecessarily dragged the trust in litigations. In support of the same, attention was sought to be invited to an order passed by the School Tribunal in one of the appeals filed by an employee wherein certain observations were made against the trust. Such orders passed by the School Tribunal or other Authorities in litigation instituted by the employees against the trust cannot become a ground for action to be taken against the trustees, like respondents herein, for removal under Section 41-D of the aforesaid Act. Therefore, there is no substance in the contentions sought to be raised on behalf of the appellants in that regard.

6. In view of the above, it is found that there is no substance in the present appeal and accordingly, it is dismissed.

JUDGE

KOLHE