

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

939 WRIT PETITION NO.5034 OF 2021

SHYAMLAL MEMORIAL EDUCATION SOCIETY UDGIR
THROUGH ITS VIKRAM NILKANTHRAO SANKAYE
VERSUS
THE JOINT CHARITY COMMISSIONER AND OTHERS

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Mr. R.D. Biradar, Advocate for the petitioner.
Mr. Yashodeep Deshmukh, advocate holding for
Mr. A.D. Kawre, Advocate for the respondents.

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CORAM : **AVINASH G. GHAROTE, J.**

DATE : 06-07-2021.

ORDER :

1. Heard Mr. Biradar, learned counsel for the petitioner. The petition takes exception to the order dated 11.02.2021 passed by the Joint Charity Commissioner, Latur in Application No. 143/2018, whereby the application filed by the petitioners, seeking to frame a preliminary issue regarding maintainability of the application under Section 41-A of the Maharashtra Public Trust Act ("MPT Act"), has been rejected. Mr. Biradar submits that it was necessary for the Joint charity Commissioner to have framed the preliminary issue, as the application under 41-A of the MPT Act was not tenable as it was beyond jurisdiction of the Joint Charity Commissioner.
2. A perusal of Section 41-A of the MPT Act demonstrates that the Charity Commissioner, has the authority and power, to issue directions to any trustee of a public trust or any person connected

therewith, to ensure that the trust is properly administered and the income thereof is properly accounted for or duly appropriated and applied to the objects of the trust and also to give directions, to the trustees or such person, if he finds any property of the trust was being in danger or being wasted, damaged, alienated or wrongfully sold, removed or disposed of.

3. By an application dated 25.09.2018 addressed to the Joint Charity Commissioner, a complaint was made to make an enquiry into the affairs of the trust by appointing an Administrator and after determining who were the legal members of the trust, to take the election of the Managing Committee as per the trust deed. This application, was taken on record as an application under Section 41-A of the MPT Act by an order dated 25.09.2018. It is submitted, that by an order dated 12.12.2018, the Joint Charity Commissioner partly allowed the same and directed election to be taken of the Managing Committee of the trust within three months. This order came to be challenged in this Court by way of Writ Petition No. 1450 of 2019, which came to be decided on 27.02.2019, whereby the order dated 12.12.2018 came to be set aside, and notices were directed to be issued to persons, who in the opinion of the Assistant Charity Commissioner, were the necessary parties for deciding the application and after permitting them to participate in the proceedings, to decide the matter afresh. Thereafter, the present petitioners, have filed an application at Exh.51, to frame preliminary issue as to whether the application under Section 41-A of

the MPT Act was maintainable and to decide the same. This has been rejected by the impugned order.

4. The enquiry under section 41-A of the MPT Act cannot be equated with an enquiry, of a judicial nature, as contemplated under the Code of Civil Procedure. It is therefore, not necessary for the Joint Charity Commissioner to have framed a preliminary issue, as to the maintainability of the application under Section 41-D of the MPT Act. The application as filed by the petitioners for this purpose, therefore, is clearly misconceived and has rightly been rejected by the Joint Charity Commissioner. It is pertinent to note that the proceedings before the Joint Charity Commissioner have been directed to be decided in a time bound manner, by the order dated 27th February 2019, passed in Writ Petition No. 1450 of 2019, which time has long since expired but has been extended from time to time. Needless to say, that while deciding any application under Section 41-A of the MPT Act, the learned Charity Commissioner is bound by the parameters as contained in Section 41-A of the MPT Act, and cannot traverse beyond what is provided therein. The apprehension expressed by Mr. Biradar that though elections have been held and change reports under Section 22 of the MPT Act are pending, would be ignored by the Joint Charity Commissioner, while deciding the application under Section 41-A of the MPT Act, as of now is misconceived, as there is nothing on record to indicate otherwise. Reliance on the case of ***Vanmala Manoharrao Kambli vs. Deputy Charity Commissioner, 2012 (3) Mh.L.J. 594*** and

specifically para-29 thereof by Mr. Biradar, learned Counsel for the petitioner, is of no assistance, for the matter in hand.

5. The petition, therefore, is dismissed. In the circumstances, there shall be no order as to costs.

(AVINASH G. GHAROTE)

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