IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4713 OF 2022
with Civil Application No.9676 of 2022

1. Nagori Muslim Misgar Jamat Trust Ahmednagar
1248/49, Maulana Azad Road, Ahmednagar.

2. Yunus Sultan Tambatkar
Age: 60 years, Occu: Business,
R/o: 2514, Ghas Galli, Ahmednagar,
Dist. Ahmednagar.

3. Irfan Ibrahim Khan
Age: 60 years, Occu: Business,
R/o: Noble Nursery School, House no.18,
666, Guruwar Peth, Pune.

4. Shaikh Zuber Shaikh Yakub
Age: 56 years, Occu: Business,
R/o: Sadar Bazar, Bhingar, Ahmednagar,
Dist. Ahmednagar.

5. Ejaz Sattar Khan,
Age: 50 years, Occu: Business,
R/o: Saibaba Nagar, Kondhava, Pune

6. Mohsin Abdul Rehman Shaikh
Age: 47 years, Occu: Business,
R/o: Mominpura, Guruwar Peth, Pune. ... **Petitioners**

Versus

1. Atik Abdul Jabbar Khan
Age: 63 years, Occu: Business,
R/o: Juni Ghas Galli, Shahaji Road,
Ahmednagar, Dist.Ahmednagar.

2. Assistant Charity Commissioner,
Ahmednagar. ... **Respondents**

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Advocate for Petitioners : Mrs. Madhaveshwari S. Mhase
Advocate for R/1: Mr. A.B. Gatne
APP for Respondent-State-R/2 : Mr. K.B. Jadhavar

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CORAM : M.G. SEWLIKAR, J.
RESERVED ON : 1st August, 2022
PRONOUNCED ON : 26th August, 2022

JUDGMENT :-

Rule. Rule made returnable forthwith. With the consent of the parties taken up for final hearing at the admission stage.

2. Facts leading to this petition are that the petitioner no.1 is the trust registered under the provisions of the MPT Act having registration no. F-17.

3. The petitioner no.1 trust was registered on 17th June, 1962. It has a sanctioned scheme. All the adult members of the Nagori Muslim Jamat are the members of the trust. Petitioner no.1 trust owns various properties which include open plots, masjid, cemetery and also runs educational institutions. The scheme provides for electing trustees every five years from its Members in the Annual General Body Meeting.

4. The trust got their first board of trustees at the time of registration of the trust. Thereafter, the first change report was filed in the

year 1966 bearing no.147/1966. It was allowed and the board of trustees started looking after the affairs of the trust. Last change report was filed and accepted in the year 1972. The term of the trustees under the said change report expired in the year 1977. In the meantime, two of the trustees expired and their vacancy was filled. The change to that extent was reported by change report no.777/1974 and the same was accepted on 28th October, 1974.

5. It is further alleged that from 1977 to 2005 no election was held and no trustee was elected. All the members of the board of trustees expired and the vacancy created on that account was not filled. Only one person from the said board of trustees is alive and he too has become *functous officio*. The petitioners further alleged that since no one was looking after the affairs of the trust, the petitioners started administering the affairs of the trust. The petitioners, thereafter, filed Application No.60/2016 before the respondent no.2-ACC under Section 47 of the MPT Act for being appointed as trustees and for further directions, which is pending.

6. During the pendency of Application No.60/2016, Inquiry Application No.101/2021 was filed by respondent no.1 before the respondent no.2-ACC making false and baseless allegations that the property of the trust is being wasted by the petitioners and funds are being misappropriated.

7. All of a sudden, out of the blue Inspector arrived on the premises of the trust for inspection. The petitioners fairly placed all the facts before the Inspector. The petitioners stated before the Inspector that they are elected trustees and to avoid the wastage of property, they are administering the affairs of the trust and they are operating bank accounts.

8. Respondent no.2 without issuing any notice to the petitioners passed the order on the basis of the report of the Inspector restraining the petitioners from administering the trust and also freezed the bank accounts. This order was passed on 28th September, 2021. This order is impugned in this petition.

9. Respondent no.1 filed his affidavit in reply. It is contended in the affidavit in reply that petitioner nos.2 to 6 had declared themselves as trustees of the trust, without any order from respondent no.2-ACC and without being elected as trustees. They are the self proclaimed trustees. No notice was required to be issued to petitioner nos.2 to 6 as they are not appointed as trustees. Election of the trust took place in the year 2022 i.e. on 8th April, 2022 and new trustees have been elected. They have already submitted the change report to respondent no.2-ACC. The petitioner nos.2 to 6 have been operating the bank accounts and managing property of the trust illegally. Respondent no.2 admits that change report no.60/2016 under Section 47 of

the MPT Act is pending. Since the elections have been held and new elected body has come into existence, this petition has become infructuous, therefore petition deserves to be dismissed.

10. I have heard learned counsel for the petitioners Smt. Mhase, learned counsel for the respondent no.1 Shri Gatne and learned AGP Shri Jadhavar for respondent no.2.

11. Smt. Mhase submits that the respondent no.2 restrained the petitioners from operating the bank accounts and from managing the trust property. She submitted that the petitioners were required to be heard before passing any such order. She submitted that petitioners are the persons interested in the trust within the meaning of Section 2(10) of the MPT Act. Under Section 37 of the MPT Act notice is contemplated before passing any order. Section 38 of the MPT Act also contemplates notice. Section 39 also contemplates recording of finding by the Assistant Charity Commissioner or Deputy Charity Commissioner. Section 40 also contemplates inquiry before passing any order. She submitted that order has been passed without hearing the petitioners, therefore, the order is bad in law. She submitted that the Inspector arrived in the premises of the trust for inspection without any notice to the petitioners. She submitted that petitioners being interested persons in the trust, respondent no.2-ACC ought to have given notice to the petitioners

before passing the order of inspecting the premises of the trust. Petitioner nos.2 to 6 started managing the property of the trust and operating bank accounts as there was no one to look after the trust property and back accounts. They did so to avoid the wastage of the property. The construction going on in the premises of the trust was only of renovation of existing buildings. According to learned counsel Smt. Mhase, respondent no.2-ACC, thereafter, passed the orders against the petitioners and thereby restrained them from managing the property of the trust and from operating the bank accounts and from managing the affairs of the trust. Before passing this order, it was obligatory on the part of the respondent no.2-ACC to hear the petitioners. Respondent no.1 is not a trustee and his change report is also pending before the respondent no.2-ACC. She, therefore, prayed for allowing the petition.

12. Learned counsel Shri Gatne for respondent no.2 submitted that application under Section 47 of the MPT Act is pending. He submitted that by communication dated 25th June, 2021 respondent no.2-ACC informed the respondent no.1 that no elected body is in existence and no trustee is appointed on the said trust. Petitioners are not the elected members of the trust. The have been wasting the property of the trust. No notice under any of the sections of the MPT Act was required to be issued as they have no

concern with the trust. They have no authority to manage the trust and trust property. He has produced advertisements to show that the property is being wasted by the petitioners.

13. I have given thoughtful consideration to the submissions made by the learned counsel on both the sides. Admittedly, petitioners are not the trustees. The petitioners themselves have alleged in their petition that all the trustees except one have expired. And that trustee also has become *functous officio*. They have further stated that since no one was looking after the affairs of the trust, the petitioners started administering the affairs of the trust. Their Application No.60/2016 is pending before the respondent no.2 under Section 47 of the MPT Act. Section 37 deals with power of inspection by Charity Commissioner, Deputy Charity Commissioner or Assistant Charity Commissioner or any officer authorised by the State Government to inspect any property belonging to the public trust. Proviso to Section 37 says that before entering upon any property belonging to the public trust the officers making the entry shall give reasonable notice to the trustee. Petitioners by their own showing are not the trustees. Therefore, there was no question of giving notice under Section 37. Section 38 requires that Deputy Charity Commissioner or the Assistant Charity Commissioner to whom the report is submitted shall require the trustee or any other person concerned to submit

an explanation thereon within such period as it thinks fit. Section 39 requires Deputy or Assistant Charity Commissioner to furnish the report to the Charity Commissioner. It is true that Section 38 requires the Deputy Charity Commissioner or Assistant Charity Commissioner to call for an explanation from the trustee or any other person concerned. In the case at hand, the learned Assistant Charity Commissioner did not call for the explanation of the concerned persons who were illegally managing the trust i.e. the petitioners. It is not in dispute that the change report submitted was rejected. The petitioners have alleged that from 1977 to 2005 there was no election held and no trustee was elected. This clearly shows that the petitioners have no authority to manage the trust. Despite that they are managing the trust. They can be called the persons interested in the trust or other persons concerned with the trust. But non-issuance of notice by the Charity Commissioner to the petitioners did not cause any prejudice to the petitioners because the petitioners themselves have come with the case that no election was held from 1977 to 2005 and no trustee was appointed. They themselves have claimed that they are managing the trust to avoid wastage of the property and to operate bank accounts. Even if notice had been issued they would not have been able to offer any other explanation than the one they have given in the petition. Therefore, failure to issue notice to the petitioners will not have any adverse effect on the petitioners.

14. So far as respondent no.1 is concerned, his position is no better than the petitioners. He has contended that elections have been held and change report is submitted to the Assistant Charity Commissioner. It is pertinent to note that the change report filed by the petitioners bearing no.60/2016 is already pending before the Assistant Charity Commissioner. Another change report filed by the respondent no.1 is also pending. By Application No.60/2016 the petitioners have claimed that they be appointed as trustees. The respondent no.1 has filed the change report as elections have been held. Both the reports are pending, therefore, it would not be proper to allow anyone to manage the trust. While issuing notice this Court had passed the following order:

> *"4. In the mean while, the bank accounts may be operated only for releasing the salaries and payments of employees of the trust, working in the educational institution and the religious institutions."*

15. Considering this situation, I deem it appropriate to direct the learned Charity Commissioner to decide Application No.60/2016 and change report filed by the respondent no.2 bearing no. 101/2021 within six months from the date of receipt of the writ. Till then interim relief granted by this Court on 27th April, 2022 shall continue. With these directions the Writ Petition is disposed of. Civil Application also stands disposed of. Rule is made partly absolute in above terms.

mub **[M.G. SEWLIKAR, J.]**