

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1079 OF 2021

1. Dr. Prabhuappa Ramlingappa Choudhari
Age : 82 years, occ : Medical practice
R/o Majge Nagar, Latur.
2. Prabhakar Digambar Tondare
Age : 84 years, occ : agri.,
R/o Nagapur, Taluka Parli,
District Beed.
3. Babuappa s/o Ramappa Khobre
Age : 79 years, occ : agri.,
R/o Wani Galli, Renapur,
Tal. Renapur, District Latur.
4. Mallikarjun s/o Shankarappa Halkude
Age : 79 years, occ : agri.,
R/o Wani Galli, Renapur,
Tal. Renapur, District Latur.

Appellants

Versus

1. Revansiddh Mahadavyya Hiremath
Age : 43 years, occ : service
2. Channabasav Guru Mahaling Shivacharya
Age : 14 years, occ : Mathadipati
U/g of his father Revansidh s/o
Mahadavyya Hiremath
3. Ballapa s/o Baslingappa Mahajan
Age : 54 years, occ : agri.,
All above r/o Bardapur, Tal.Ambajogai,
District Beed.
4. Subhash Mahadevappa Nitrudkar
Age : 57 years, occ : agri.,
R/o Sonpeth, Taluka Sonpeth,
District Parbhani
5. Joint Charity Commissioner
(Deleted)

6. The Tahasildar,
Tahsil Office Ambajogai,
District Beed.
7. The Police Inspector,
Police Station, Bardapur,
Tal. Ambajogai, Dist. Beed.

Respondents

WITH**CA NO. 1335 OF 2022 AND CA NO. 6612 OF 2021****IN****FIRST APPEAL NO. 1079 OF 2021****WITH****FIRST APPEAL NO. 1179 OF 2021**

1. Dr. Prabhuappa Ramlingappa Choudhari
Age : 82 years, occ : Medical practice
R/o Majge Nagar, Latur.
2. Prabhakar Digambar Tondare
Age : 84 years, occ : agri.,
R/o Nagapur, Taluka Parli,
District Beed.
3. Babuappa s/o Ramappa Khobre
Age : 79 years, occ : agri.,
R/o Wani Galli, Renapur,
Tal. Renapur, District Latur.
4. Mallikarjun s/o Shankarappa Halkude
Age : 79 years, occ : agri.,
R/o Wani Galli, Renapur,
Tal. Renapur, District Latur
5. Vitthal s/o Govind Bhosale
Age : 40 years, occ : agri.,
R/o Gavlipimpri, Tal. Sonpeth,
District Parbhani.

Appellants

Versus

1. Revansiddh Mahadavyya Hiremath
Age : 43 years, occ : service
 2. Channabasav Guru Mahaling Shivacharya
Age : 14 years, occ : Mathadipati
U/g of his father Revansidh s/o
Mahadavyya Hiremath
 3. Ballapa s/o Baslingappa Mahajan
Age : 54 years, occ : agri.,
All above r/o Bardapur, Tal.Ambajogai,
District Beed.
 4. Baslingappa Vishwanathappa Modiwale
Age : 65 years, occ : agri.,
R/o Digol (e), Taluka Sonpeth,
District Parbhani
 5. Joint Charity Commissioner
Latur Region, Latur (Deleted)
 6. The Tahasildar,
Tahsil Office Ambajogai,
District Beed.
 7. The Police Inspector,
Police Station, Bardapur,
Tal. Ambajogai, Dist. Beed.
- Respondents

WITH

CA NO. 7246 OF 2021 AND CA NO. 1321 OF 2022

IN

FIRST APPEAL NO. 1179 OF 2021

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Mr. Sunil V. Warad, Advocate for the appellants.
Mr. P.M. Nagargoje, Advocate for respondent Nos. 1 and 2.
Mr. S.R. Yadav-Lonikar, A.G.P. for respondent Nos.6 and 7.

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 19.09.2022
Judgment pronounced on : 13.10.2022

Judgment:

1. The appellants, who are the original respondents in Application No.84/2018 and Application No. 114/2019, have challenged the identical orders dated 03.02.2021 in the aforesaid applications passed by the learned Joint Charity Commissioner, Latur whereby they are temporarily restrained from causing interference in Trust Management being conducted by present respondent No.2 i.e. the original applicant No.2. The appellants have also challenged the appointment done by the learned Joint Charity Commissioner, Latur of Tahsildar, Ambajogai and Police Inspector, Bardapur as care takers of the Trust, till present respondent No.2 attains age of majority.

2. Learned Counsel for the appellants submits that the appellants are trustees of the Trust by name Shri Guru Mahaling Swami Math, Bardapur, Taluka Ambajogai, District Beed, however, respondent No.2 despite being minor, is looking after the affairs of the Trust through his father – respondent No.1 without any provision of such delegation. He further claims that the founder Mathadhipati was in fact removed on account of misconduct as per the Scheme of Trust and despite such removal, he appointed the present respondent No.2 as a new Mathadhipati by violating the

Scheme. He submits that the learned Joint Charity Commissioner, Latur has definitely erred in issuing prohibitory orders under Section 41E of the Maharashtra Public Trust Act (for short, "MPT Act") without there being any jurisdiction. Moreover, the appointment of care takers by the learned Joint Charity Commissioner definitely exceeds jurisdiction provided to him.

3. On the contrary, learned Counsel for respondent Nos.1 to 4 supported the impugned orders on the ground that by-laws of the Scheme of Trust do not prohibit minor being appointed as Mathadhipati. Moreover, various Change Reports in respect of the appointments are pending before the concerned Assistant Charity Commissioner, and therefore, the learned Joint Charity Commissioner is definitely empowered to issue injunctions as per Section 41E of the MPT Act. He supported the order of care takers who are Tahsildar and Police Inspector for restricting the present appellants from unnecessary interference in the trust property.

4. On the other hand, the learned Counsel for the Intervenor in his argument supported the appellants herein by making submissions that there is no discussion in the impugned orders as to how the property of Trust is being

wasted at the hands of the present appellants.

5. With the assistance of learned Counsel of the rival contesting parties, I have gone through the impugned judgment and affidavit-in-reply filed on behalf of respondent No.2 and also the documents annexed therewith.

6. From the perusal of the judgment itself, it appears that the present respondent Nos.1 to 4 are claiming that respondent No.2 was appointed by the founder Mathadhipati Shri Chanbasaw Guru Mahaling Swami as per the bye-laws of the Scheme of Trust. The present appellants are not trustees as their period had already lapsed 15 years back, but unfortunately their names were not deleted from the P.T.R. of the Trust. They are taking dis-advantage of the same and interfering in the affairs of the Trust. According to respondent Nos.1 to 4, the present appellants illegally and without any authority are trying to manage the immovable properties of Math by publishing the news in the newspaper for letting out the Math property. They further contended that the appellants, in the past also, tried to file applications under Section 41E of the MPT Act for seeking injunctions against them, but ultimately their applications were dismissed.

7. On the contrary, it appears that the original respondent Nos.1 to 4, who are the present appellants, are claiming that respondent Nos.1 to 4 are not trustees nor they are interested persons. According to them, the founder Mathadhipati was already removed due to misconduct, and therefore, they had appointed new Mathadhipati prior to the appointment of present respondent No.2. As such, they claim that the founder Mathadhipati was not empowered to appoint the present respondent No.2, who is also his nephew.

8. The documents on record and the observations of the learned Joint Charity Commissioner, Latur clearly indicate that as per the bye-laws, the founder Mathadhipati Shri Chanbasaw Guru Mahaling Swami had appointed the present respondent No.2 as Mathadhipati vide Resolution dated 07.04.2013 and after his death, respondent No.2 is looking after the Trust Management as per the Scheme of the Trust through respondent No.1 i.e. his father. Further, it appears that though the present appellants had appointed one Shri Panditaradhya Shivacharya as a Mathadhipati after removing founder Mathadhipati Shri Chanbasaw Guru Mahaling Swami, but Change Report to that effect is still pending.

9. It is extremely important to note that the learned Joint Charity Commissioner, in his judgment, has considered the rival submissions of contesting parties and has come to the conclusion that there was no bar for appointment of respondent No. 2 as Mathadhipati despite being a minor. Further, it has also been observed that though the present appellants are claiming that founder Mathadhipati Shri Chanbasaw Guru Mahaling Swami was removed from the office of Mathadhipati in the year 2011 itself as per bye-laws and since before that he had appointed one Rudramani as Mathadhipati, he had lost power in the year 2013 to appoint the present respondent No.2 as Mathadhipati. However, the learned Joint Charity Commissioner, by relying upon the Scheme of the Trust, has come to conclusion that Mathadhipati is the sole trustee and ex-post facto President of the Trust and only as per his wish six trustees are to be elected for the period of three years and after that, Mathadhipati has to elect the trustee as per his wish. It is extremely important to note that the learned Joint Charity Commissioner, Latur has specifically observed that there was no provision of removal of Mathadhipati as per Clause-7 of the Scheme and there was also no bar to appoint the relative

being a disciple. It is further observed that there is also no bar to appoint a minor as Mathadhipati, and therefore, the present respondent No.1 whose interest is not contrary to respondent No.2 can act as a natural guardian.

10. Be that as it may, the applicants wherein the impugned order is passed, are only in respect of restraining the present appellants from interfering with the property of Trust / Math. On this aspect, learned Joint Charity Commissioner has given reference of earlier applications filed by the present appellants under Section 41E of the MPT Act bearing Enquiry No.1/2010 and Enquiry No. 6/2010. The present respondent No.2 has annexed copies of the judgments in the aforesaid Enquiry Applications alongwith his reply. On perusal of the same, it is clearly evident that those applications were decided on merits on 19.01.2010 and 20.04.2012 respectively, wherein the present appellants had made serious allegations against the present respondent Nos.1 to 4 that they were mis-managing the properties of the Trust / Math. However, at the relevant time those allegations were not proved against the present respondent Nos.1 to 4. Thus, it is evident that the present appellants could not succeed in showing that respondent Nos.1 to 4 are causing

loss to the Trust / Math. Further, the present appellants in their reply before the Joint Charity Commissioner, Latur had also admitted that they tried to lease the Trust lands by public notice in daily newspaper. This very act of the appellants clearly indicates that they are interfering in the Trust Management despite appointment of the present respondent No.2 as Mathadhipati. Further, it is also evident that so many Change Reports are pending wherein the concerned parties are trying to establish control over the Math. It is extremely important to note that the learned Joint Charity Commissioner has specifically observed that the present respondent Nos.1,3 and 4 on one hand and the appellants on the other hand are making allegations against each other, and therefore, it was necessary to appoint care taker for the Trust and its property on behalf of minor respondent No.2 till he attains age of majority.

11. Thus, it can be seen that the learned Joint Charity Commissioner has properly directed the appointment of care takers to safeguard the interest and property of Math.

12. The learned Counsel for the appellants vehemently argued that the order of the learned Joint Charity Commissioner, Latur of appointing the care takers is

definitely beyond the scope of Section 41E of the MPT Act. I would like to reproduce the said Section herein below.

“41E. (1) 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,

the 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 other appropriate order.

(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”.

It is clearly mentioned in the aforesaid section that the Charity Commissioner may, by order, grant temporary

injunction or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of trust property, as he thinks fit. Here in this matter, it is already opined by the learned Joint Charity Commissioner that there was dispute between the appellants and respondent Nos.1, 3 and 4 for gaining control over the Trust, and therefore, the order of appointing care taker is definitely falls under the purview of Section 41E of the MPT Act as mentioned above, for protecting the property of Math.

13. Considering the above discussed facts, I am of the opinion that the learned Joint Charity Commissioner, Latur has passed appropriate orders in the applications filed by the present respondent Nos.1 to 4 under Section 41E of the MPT Act and thereby tried to prohibit the wastage of Trust properties. Thus, I do not find any merit in the present appeals and ultimately the same stand dismissed. Accordingly, pending Civil Applications, if any, stand disposed of.

(SANDIPKUMAR C. MORE, J.)