IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 **FIRST APPEAL NO.3389 OF 2019**
WITH CA/13608/2019 WITH CA/12422/2021

1. Prashant S/o Balasaheb Wagh,
Age 50 years, Occ. Agri.,
R./o Ter, Tal & Dist. Osmanabad.

2. Harshvardhan Dhanwant Chaugule,
Age 25 years, Occ. Agri.,
R/o as above. ... **APPELLANTS**

VERSUS

1. Shankar Gurulingappa Zade,
Age Major, Occ. Nil,
R./o Ter, Tal & Dist. Osmanabad.

2. Anant Rangnathrao Kulkarni,
Age Major, Occ.nil,
R/o as above.

3. Jalindar Yadavrao Raut,
Age Major, Occ.nil,
R/o as above.

4. Haripandit Janardhanrao Patil,
Age Major, Occ.nil,
R/o Hasegaon, Tal. Kallam,
District Osmanabad.

5. Vishnu Bhagwean Thodsare (died)

6. Vitthal Vishwanath Andhale,
Age Major, Occ.Nil,
R/o Ter, Tal & Dist. Osmanabad.

7. Joint Charity Commissioner,
Latur, Tal. & Dist. Latur. ... **RESPONDENTS**

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Advocate for Appellants : Mr. Thombre S.S
Advocate for R/1 to 4 : Mr. Murge Estling
Advocate for R/6 : Mr. Sabnis Ameya

…

WITH

FIRST APPEAL NO.3546 OF 2019
WITH CA/13608/2019 WITH CA/12423/2021

1. Shankar Gurulingappa Zade,
Age 70 years, Occ. Agri,
R./o Ter, Tal & Dist. Osmanabad.

2. Anant Rangnathrao Kulkarni,
Age Major, Occ. Nil,
R./o Ter, Tal & Dist. Osmanabad.

3. Jalindar Yadavrao Raut,
Age 70, Occ.nil,
R./o Ter, Tal & Dist. Osmanabad.

4. Haripandit s/o Janardhanrao Patil,
Age Major, Occ.Nil,
R/o Gonwardhanwadi,
Tq. & Dist. Osmanabad. … **APPELLANTS**

VERSUS

1. Prashant Balasaheb Wagh
Age: 50 years, Occu; Agri,
R/o Ter, Tal & Dist. Osmanabad.

2. Harshvardhan Dhanwant Chaugule
Age: 25 years, Occ: Agri,
R/o Ter, Tal & Dist. Osmanabad.

3. Vishnu Bhagwan Thodsare (died)

4. Vitthal Vishwanath Andhale,

Age Major, Occ.Nil,
R/o Ter, Tal & Dist. Osmanabad.

5. A.P.I. Police Station, Dhoki,
Tq. & Dist. Osmanabad.

6. Tahsildar @ Executive Magistrate
Tahsil Office, Osmanabad. … **RESPONDENTS**

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Advocate for Appellants : Mr. Murge Estling
Advocate for R/1 & 2 : Mr. Thombre S.S
Advocate for Applicant in CA/12423 : Mr. Raut Rajdeep

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CORAM : ANIL L. PANSARE, J.
DATE : 8th July, 2022

ORAL JUDGMENT:-

The appellants in both the appeals have assailed the order dated 16.04.2019 passed by the Joint Charity Commissioner, Latur in Inquiry No.81/2019, whereby the application filed by the appellants in First Appeal No.3389/2019 under Section 41-E of the Maharashtra Public Trusts Act, 1950 (for short the 'MPT Act') has been partly allowed and both the parties viz. appellants in both the appeals have been restrained from administering the trust, collecting donations and doing other financial transactions of the trust. Respective appellants have also been restrained from handling the bank accounts of the trust. Further, the Administrator has been appointed for administration of the day to day activities of the trust with the direction to the

Administrator to hold the elections of the trust in the event all the pending change reports are rejected. For better understanding, the appellants in First Appeal No.3389/2019 will be hereinafter referred to as 'the appellants' and the appellants in First Appeal No.3546/2019 will be referred to as 'fit persons'.

2. The trust under question is a religious trust, namely, Shri Sant Goroba Kaka and Shiv Mandir, Osmanabad bearing PTR No.A-2581/Osmanabad. It appears that in the year 1995 a complaint was made to the Assistant Charity Commissioner, Osmanabad against the management of the trust. The then Inspector conducted an inquiry bearing no.10/1995 and submitted a report to the Assistant Charity Commissioner. In turn Assistant Charity Commissioner found that the scheme was framed and first board of trustees were appointed on or about 24.03.1989. The tenure of trustees was three years. The tenure of first board of trustees has expired in the year 1992. The elections were not conducted thereafter. The earlier trustees continued till 1997 without conducting elections. The accounts were not properly maintained. The President and Secretary were unable to work together. The Secretary and the President held separate elections on 13.07.1997 and 27.07.1997 respectively. Accordingly vide letter dated 14.10.1997, the Assistant Charity Commissioner made a recommendation to the Joint Charity Commissioner to initiate suo moto proceeding under Section

41-D of the MPT Act. The learned Joint Charity Commissioner vide interim order dated 01.08.2006 framed the charges against the then trustees and suspended them till the decision of the main proceedings. At the same time, the learned Joint Charity Commissioner appointed five persons named in the order as fit persons for administration of the trust.

3. Thereafter, final order came to be passed on 27.09.2011. By the said order, the learned Joint Charity Commissioner has disposed of the proceedings as against the then trustees viz. non-applicants 1, 3 and 7 and discharged non-applicants 2, 4, 5, 6 and 8. However, by the operative clause no.2, the non applicants 1, 3 and 7 were declared not entitled to become trustees or office bearer of the trust in future. In addition the learned Joint Charity Commissioner directed fit persons to continue till further orders.

4. The non applicants therein thereafter moved an application in Inquiry No.10/2001 seeking directions from learned Joint Charity Commissioner to remove the names of the fit persons from the Schedule-I. One of the grounds for seeking such directions was that the fit persons cannot be termed as trustees of the trust and therefore their name should not appear on Schedule-I. The learned Joint Charity Commissioner after taking into consideration the overall scenario, vide order dated 27.09.2011, directed deletion of the names of the fit persons from Schedule-I, however, the fit

persons were directed to continue to function till the new trustees are appointed or in accordance with the provisions of the instrument of the trust either under Section 22 or 47 or 58 of the MPT Act.

5. Pursuant to aforesaid order passed by the learned Joint Charity Commissioner, the appellants have allegedly held election and filed change report before the Assistant Charity Commissioner for the period from 2012 to 2015. The change report has been registered as Inquiry No.72/2013 which was pending when the impugned order was passed. The appellants / reporting trustees in the said change report filed an application under Section 41-E of the MPT Act against the fit persons. The application came to be registered as Inquiry No.5/2013. The reporting trustees sought an injunction against the fit persons restraining them from carrying out administration of the trust and from collecting donation so also from operating bank accounts. The application was filed on the ground that the fit persons are taking advantage of their names having been recorded in Schedule-I. The contentions of appellants was that the change report has been filed and in view of the order dated 27.09.2011 passed by the learned Joint Charity Commissioner in Inquiry No.10/2001, the newly elected body has taken charge of the trust and therefore the tenure of the fit persons has came to an end.

6. The learned Joint Charity Commissioner vide order dated 06.05.2013 allowed the application and thereby restrained the non-applicants 1 to 6 therein i.e. fit persons from conducting the administration of the trust and from collecting donation, so also operating bank account of the trust. However, this order continued for five years. The fit persons did not interfere in the administration of the trust. On 04.09.2018, the final order in Inquiry No.5/2013 came to be passed, whereby, the learned Charity Commissioner has dismissed the application. Thus the injunction against the fit persons was vacated.

7. It appears that thereafter the body of fit persons took over the charge of the trust and therefore the other group i.e. the appellants again filed application under Section 41-E of the MPT Act seeking the order of injunction against fit persons restraining them from obstructing the appellants in looking after day to day affairs of the trust. Further reliefs were sought seeking injunction against respondents restraining them from collecting donation and from withdrawing donation from donation box and from operating trust account etc.

8. The learned Joint Charity Commissioner vide order dated 16.04.2019 (the impugned order) has partly allowed the application and

restrained both the parties from administrating the trust, collecting donations and doing other financial transactions of the trust and from handling bank account of the trust. In addition the Administrator has been appointed with directions to hold the elections of the trust, if all the pending change reports fail. The Assistant Charity Commissioner, Osmanabad has been directed to decide all pending change reports preferably within a period of three months from the date of the order.

9. The learned advocate for the appellants in both the appeals have criticised the impugned order on various grounds. It is argued by Mr. Thombre, learned advocate for the appellants that the order passed by the learned Joint Charity Commissioner to the extent of appointment of the Administrator is beyond the jurisdiction. He further contends that the learned Joint Charity Commissioner should have either dismissed the application or should have allowed the application by injuncting respondents in terms of reliefs sought by the appellants.

10. Learned advocate Mr. Murge Estling for the fit persons contends that when similar such application under Section 41-E of the MPT Act was filed earlier by the members of the group of the appellants in Inquiry No.5/2013, the learned Joint Charity Commissioner vide order dated 04.09.2010 dismissed the application on the ground that the relief sought

therein seeking injunction against the body of the fit persons restraining them from doing day to day affairs of the trust like collecting donations/funds of the trust and from handling the bank accounts of the trust does not fall within the ambit of Section 41-E of the Act. The learned Joint Charity Commissioner observed that injunction could only be granted for protection of trust properties from wasting, damaging, alienation, sale, removal or disposition. Such injunction could only be granted when trust property is put in the danger in any manner. It was further observed that the applicants therein have not whispered in any manner as to what danger is anticipated against the trust property. Thus, the Joint Charity Commissioner found that the reliefs sought were beyond the scope of Section 41-E of the MPT Act and dismissed the application. Therefore, when second such application was filed for similar such reliefs on similar set of facts, there was no reason for the learned Joint Charity Commissioner to entertain the application and pass an impugned order.

11. There appears substance in the contentions and the arguments advanced by both the parties. The learned Joint Charity Commissioner while rejecting similar such application vide order dated 04.09.2018 has correctly arrived at a conclusion that since the reliefs do not fall within the scope and ambit of the Section 41-E of the MPT Act, the application could not be

entertained. There is no serious dispute that the reliefs sought in the earlier application and reliefs sought in the subsequent application were same. As narrated above by way of subsequent application, the appellants sought order of injunction against the body of fit persons restraining them from obstructing the appellants who were reporting trustees in the change report no.100/2019 pending before the Assistant Charity Commissioner, Osmanabad from looking after the day to day administration of the trust. Further relief has been sought to restrain the fit persons from collecting donations, withdrawing amount from donation box and operating trust account etc. The cause for filing application was that, since the fit persons are taking undue advantage by misinterpreting the dismissal order in the Inquiry No.5/2013, the fit persons now cannot claim themselves to be the trustees and take over the management of the said trust in their hands.

12. Mr. Thombre would argue that in Inquiry No.5/2013, vide order dated 06.05.2013 which was an interim order, the fit persons were restrained from collecting donations/funds and were restrained from operating bank account. This order continued till the year 2018. Thereafter, the application in Inquiry No.5/13 came to be rejected. It is argued that merely because the application under Section 41-E came to be rejected that by itself will not permit the fit persons to take over the management of the trust. In support of

such argument, Mr. Thombre has referred to order dated 27.09.2011 passed below (Exhibit-53) in Inquiry No.10/2001 by the then Joint Charity Commissioner, Latur whereby the names of fit persons were directed to be deleted and fit persons were continued to function till the new trustees are appointed in terms of Section 22 or 47 or 50-A of the MPT Act. Mr. Thombre would contend that pursuant to said order, the change report came to be filed under Section 22 of the MPT Act bearing Inquiry No.72/2013. The moment the change report was filed, the fit persons ceased to exist. The effect of filing change report, in terms of settled position of law was that the incoming trustees would be the elected members of the managing committee of the trust. The management of the trust pending change report has always been with the incoming trustees. In that sense and in terms of order dated 27.09.2011 passed by the learned Joint Charity Commissioner the functioning of the fit persons came to an end. This important aspect having been not considered by the learned Joint Charity Commissioner, it is argued that the order impugned is passed without application of mind.

13. What is argued by Mr. Thombre in respect of settled position of law is correct when only one change report for the stipulated tenure of the trust is pending. Learned advocate for the fit persons would contend that one more inquiry was pending before the Assistant Charity Commissioner at the

relevant time. This change report was naturally filed by the persons related to the group of fit persons. Nonetheless, it is admitted that when learned Joint Charity Commissioner passed impugned order, the filing and pendency of another change report was neither argued nor considered by the learned Joint Charity Commissioner. It appears that the said change report has been filed couple of days prior to the passing of the impugned order. That being so the advantage of the law laid down by the co-ordinate bench of this Court in the case of **Janta Shikshan Sanstha and another Vs. The State of Maharashtra and others** in **Writ Petition No.6073/2005** would be in favour of the appellants. The Court held that filing change report is mere formality and that incoming trustees would be the managing trustees. The Court held that submission of the change report is a mere formality and till such time as orders are passed by the competent authorities rejecting the change report, the newly elected representatives could not be prohibited from functioning. It is further held that merely because the change report is pending, the old body does not continue and the old body therefore cannot be permitted to function merely on the count that the change report is pending consideration before the appropriate authority.

14. However, such advantage by itself would not be of any help to the appellants in as much as reliefs sought in the applications were outside the

purview of Section 41-E of the MPT Act. Similar such application that was filed earlier, was rejected precisely on the said ground. The said order has attained finality. Therefore and taking in to consideration the scope of Section 41-E which relates to protecting the properties of the trust, the restraining order as sought by the appellants in respect of management of trust would not fall within the purview of Section 41-E of the MPT Act. Consequently, the impugned order is unsustainable in law. Further, the learned Joint Charity Commissioner could not have appointed the Administrator to run the affairs of the trust under Section 41-E of the MPT Act, there being no such scope under the said provision.

15. In the case of **Janta Shikshan Sanstha, Dapodi, Pune & Ors. V/s. Ajit Subhash Kashid and others** in **First Appeal No.262/2019** the Single Judge of this Court at the Principal Seat while considering the scope of Section 41-E observed in para 24 as under:

> *"24. It is to be noted that the authority cited by the appellants as well as respondents are not pertaining to the powers of Joint Charity Commissioner under section 41-E of the said Act, but sum and substance of these authorities is that office of the Charity Commissioner can exercise their power under the said Act, as per particular section only. In the case in hand, when the Respondents filed Application under section 41-E of the said Act, there is no question of granting any other relief beyond the scope of the said section."*

16. Shri Thombre has placed reliance upon the judgment in the case of **Janta Shikshan Sanstha and Ors. Vs. State of Maharashtra and Ors.** reported in **MANU/MH/3931/2021**, the Division Bench while dealing with the scope of Section 41-E observed as under:

> *"37. The Joint Charity Commissioner in the said order rendered a finding that the said application filed under Section 41-E of the said Trust Act was maintainable and that the applicant therein had made out a case for grant of temporary injunction. The Joint Charity Commissioner restrained the Governing Council of the petitioner no.1 from holding the meeting of the General Body on 26th August 2019 or any time thereafter without issuing the notices of the General Body Meeting to all the confirmed teachers, who had been confirmed in service in any of the branches of the petitioner no.1 prior to issuance of the said notice.*
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> *38. A learned Single Judge of this Court in the said judgment dated 16th August 2019 in First Appeal filed by the petitioner no.1 against the said order passed by the Joint Charity Commissioner has held that in the said application filed by the aplicant therein, there was prayer to restrain the petitioner no.1 from holding General Body Meeting without issuing the notices to all the confirmed teachers, who had been confirmed in service in any of the branches of the petitioner no.1 prior to 26th July 2016. There was no prayer for injunction restrainng the members/society from wasting any trust's property. This Court*

> *has held that at the most, the Joint Charity Commissioner under Section 41-E of the said Trust Act could pass suo moto order only in respect of protection of charities. For granting any relief under Section 41-E of the said Trust Act by way of injunction, there has to be an essential requisite and prima facie case to show such eminent danger in respect of the property of the trust.*
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> *39. This Court accordingly held that the Joint Charity Commissioner has no power under Section 41-E of the said Trust Act to direct the trust to hold election. This Court accordingly was pleased to quash and set aside the order dated 9th February 2018 passed by the Joint Charity Commissioner. This Court has however granted liberty to the applicant therein, if they so desired, to prefer appropriate application for declaring them as General Members of Janata Shikshan Sanstha, Pune as per its Constitution according to law. In our view, since the said order passed by the Joint Charity Commissioner was totally perverse and without jurisdiction, learned Single Judge of this Court rightly set aside the said order. No reliance thus could be placed by the respondent no.5 on the order passed by the Joint Charity Commissioner."*

17. It is thus clear that unless and until it is shown that there is imminent danger to the trust properties, the application under Section 41-E will not be maintainable. In the present case, the applicants/appellants before the learned Joint Charity Commissioner have not even pleaded of any such imminent danger to the trust property. Having not done so there would not arise any question of granting any relief in terms of Section 41-E of the MPT

Act. The learned Joint Charity Commissioner has erroneously passed impugned order and restrained both the parties from managing the affairs of the trust and further appointed Administrator to look after the affairs of the trust. Section 41-E does not provide for appointment of the Administrator. The learned Joint Charity Commissioner has observed that there is dispute between two groups viz. appellants and the fit persons herein. It is then observed that because of such dispute, the management of the trust has collapsed. The Joint Charity Commissioner came to the conclusion that it would not be safe to hand over management of the trust in the hands of the either party, pending the change reports.

18. The aforesaid finding is contrary to the law laid down in the case of **Janta Shikshan Sanstha and another Vs. The State of Maharashtra and others** in **Writ Petition No.6073/2005**. It appears that the said judgment was not cited before the learned Joint Charity Commissioner and therefore the erroneous order came to be passed. The appointment of Adminstrator has in one way suspended all the trustees named in the pending change reports, who were elected and had filed change reports. Until the change reports were rejected and without there being any change report pending of rival party, there was no reason for the learned Joint Charity Commissioner to appoint the Administrator.

19. So far as the status of fit persons is concerned, the same has been crystallized in order dated 27.09.2011, by which the learned Joint Charity Commissioner had directed to delete the names of fit persons from Schedule-I, but permitted them to continue the functioning till the new trustees are appointed. By filing the change report bearing Inquiry No.72/2013 and thereafter further change reports, the fit persons ceased to continue functioning in the trust administration. The appellants have claimed that they were elected trustees and were entitled to administer the trust in terms of the law laid down in **Janta Shikshan Sanstha and another Vs. The State of Maharashtra and others** in **Writ Petition No.6073/2005**. These persons have been restrained from managing the affairs of the trust without there being any proceedings against the said reporting trustees under Section 41-D of the MPT Act. The learned Joint Charity Commissioner was bound to pass orders keeping in mind that the proceedings were initiated under Section 41-E of the MPT Act and not under Section 41-D. The purpose of filing application under Section 41-E was to protect the properties. The learned Joint Charity Commissioner has instead transferred the administration of the trust to the Administrator. The order impugned passed is, thus, beyond the jurisdiction and the powers vested with the learned Joint Charity Commissioner.

20. The sum and substance of above discussion is that the appellants failed to make out a case for granting any relief in their favour. The learned Joint Charity Commissioner has restrained both the parties from managing the affairs of the trust which could never be the purport of Section 41-E of the MPT Act. Further the appointment of Administrator to look after the affairs of the trust is something not envisaged under Section 41-E of the Act. The order being erroneous, is liable to be quashed and set aside and stands set aside accordingly.

21. It is made clear that the present order will not permit the fit persons to administer the trust properties. Their status will be governed by the order dated 27.09.2011 passed by the learned Joint Charity Commissioner in Inquiry No. 10/2001 viz. the fit persons therein would continue to function till the trustees are appointed in terms of Section 22, 47 or 58 of the MPT Act.

22. It is informed that there are claims and counter claims in respect of the managing body in view of pending change reports before the Assistant Charity Commissioner. It will be thus proper to direct the Assistant Charity Commissioner to decide all pending change reports as expeditiously as possible and in any case on or before 31.12.2022, in order to settle the dispute *inter se* appellants and group of fit persons.

23. The respective reporting trustees shall appear before the Assistant Charity Commissioner on 28.07.2022. Parties to the pending change reports shall co-operate to decide all pending change reports. The parties shall not seek adjournments without extreme urgent cause. The Assistant Charity Commissioner is at liberty to advance to next stage, in case it appears that unnecessary adjournment has been sought. The Assistant Charity Commissioner is at liberty to direct the concerned Inspector to pay periodical visit to the temple and the trust to ensure that donations received by the temple and the trust are utilised towards the fulfillment of the object of the trust. The Assistant Charity Commissioner is at liberty to pass appropriate orders in terms of Section 41-A of the MPT Act as and when such need arises.

24. Before parting with the judgment, it is necessary to comment upon the civil application no.12423/2021 filed for intervention. The application is filed at the appellate stage. There is no reason why such application seeking intervention has not been filed in the inquiry pending before the Joint Charity Commissioner or the Assistant Charity Commissioner as the case may be. The learned advocate for applicant has argued that the only intention of the applicant is to assist this Court, however, upon query made by the Court as to which fact is within the exclusive knowledge of the applicant that has not been put forth by the contesting parties before this

Court, no convincing answer is forthcoming. The applicant contends that he would support the impugned order passed by the Joint Charity Commissioner, however, the learned advocate for the applicant failed to point out any provisions of law under which the learned Joint Charity Commissioner could have passed the impugned order restraining both the sides from managing affairs of the trust and appointing Administrator under Section 41-E of the MPT Act. The application is accordingly rejected. The applicant is at liberty to approach the Assistant Charity Commissioner for redressal of his grievance.

25. The appeals are disposed of in above terms, with no order as to the costs.

[ANIL L. PANSARE, J.]

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