

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5594 OF 2022

Shree Datta Devasthan Trust
A registered trust registered under
provisions of Maharashtra Public
Trust Act, 1960 having its registration
No. A-711 having its office at
Shree Dattakshetra, Vedantnagar,
Manmad Road, Ahmednagar,
Through its Trustee

- 1] Mr. Dinesh Patwardhan
Age : 55 years, Occu : Service,
R/o. C-501, Pate Sanstriti
Tulshibagwale Colony,
Sahakarnagar No. 2, Pune
- 2] Mr. Devraj Prabhkar Kashikar,
Age : 66 years, Occu : Retired
R/o : Prabhuniwas Society,
S. No. 2/12, Dhankawadi,
Pune 411 043
- 3] Mr. Tushar Karnik
Age : 62 years, Occu. : Retired
R/o; A, 401, Swapna Samrat Housing
Society, Karve Nagar, Brandawane,
Pune 411 004
- 4] Mr. Pradip Joshi
Age : 36 years, Occu. : Service
R/o : Pawan, C 205, DSK Vishwa
Sinhagad Road, Dhayari, Pune 411 041

.. Petitioners

Versus

- 1] Shri Milind Govind Kshirsagar
Age : 56 years, Occu : Service
R/o : "Sanman" Apartment, Ground Floor,
Gaikwad Colony, Savedi Road,
Ahmednagar
- 2] Shri Abhay Mohanrao Brahme
Age : 49 years, Occu. : Service,
R/o : Flat No. 2, Gharanda Apartment,
S. No. 78/4-5 Plot No. 63 Davi Bhusari Colony,
Near Shrungeri Math, Paud Road,
Pune 411 038

3] Shri. Balkrishna Damodhar Amrutkar,
Age : 67 years, Occu. : Business,
R/o : 22, Vivek Bungalow, Ashok Nagar,
Dhule

4] Assistant Charity Commissioner,
Ahmednagar, Tal & Dist. Ahmednagar

5] Mr. Sanjay Kshirsagar,
Age : 56 years, Occu : Profession
R/o : Vishnu Kamal Complex,
Narayan Peth, Pune 411 030

.. Respondents

...
Mr. S.P. Brahme, Advocate for petitioners
Mr. R.N. Dhorde, Sr. Advocate i/b. Lex Aquila for respondent no.1
Mr. V.D. Salunke, Advocate for respondents no. 2 and 3
Mr. P.G. Borade, AGP for respondent no. 4
Mr. S.D. Joshi, Advocate for respondent no. 5
...

**WITH
WRIT PETITION NO. 6280 OF 2022**

1] Shri Purushottam Bhagwant Kulkarani
Age – 66 years, Occupation – retired
Residing at Gurukrupa, Plot No. 55,
Sainath Nagar, Aurangabad 431 010

2] Shri Rajan Vasant Joshi
Age – 63 years, Occupation – retired,
Residing at 302, Namrata Heights,
Aadharwadi, Kalyan (West) 421 301

3] Shri Mohan Padmanath Shukla
Age-53 years, Occupation – service
R/at. 122 Sambhaji Nagar, Pandurang Wadi,
Jalgaon – 425 003
Being the trustees of Shri Datta Deosthan Trust,
Ahmednagar

.. Petitioners

Versus

1] Shri Milind Govind Kshirsagar,
Age : Adult, Occu. Service,
R/at -"Sanman" Apartment, Ground Floor,
Gaikwad Colony, Savedi Road,
Ahmednagar

- 2] Shri Abhay Mohanrao Brahme
Age : 47 years, Occ. Service,
R/at – Flat No. 2, Gharonda Apartment,
S. No. 78/4-5, Plot No. 63, Davi Bhusari
Colony, Near Shrungeri Math, Paud Road,
Pune – 411 038
- 3] Shri Balkrishna Damodhar Amrutkar
Age – 67 years, Occupation – Business,
R/at 22, Vivek Bunglow, Ashok Nagar,
Dhule
- 4] Ld. Joint Charity Commissioner, Pune
- 5] Mr. Dinesh Patwardhan
C-501, Pate Sanskriti,
Tulshibagwale Colony,
Sahakarnagar No. 2, Pune
- 6] Mr. Devraj Kashikar
Prabhuniwas Society, S. No. 2/12,
Dhankawadi, Pune 411 043
- 7] Mr. Tushar Karnik
Society, Karve Nagar,
Erandawane, Pune 411 004
- 8] Mr. Pradip Joshi
Pawan, C 205, DSK Vishwa,
Sinhagad Road, Dhayari,
Pune 411 041
- 9] Shri Sanjay S. Kshirsagar
1, Vishnu Kamal Complex,
Appa Balawant Chowk,
Narayan Peth, Pune 411 030

.. Respondents

[Resp. No. 1 to 3 – Orig.
Opponents and Nos. 5 to 9
Ori. Appellants]

...
Mr. P.R. Katneshwarkar, Advocate for petitioners
Mr. R.N. Dhorde, Sr. Advocate i/b. Lex Aquila for respondent no.1
Mr. V.D. Salunke, Advocate for respondents no. 2 and 3
Mr. P.G. Borade, AGP for respondent no. 4
Mr. S.P. Brahme, Advocate for respondent no. 5
Mr. S.D. Joshi, Advocate for respondents no. 6 to 9
...

**AND
WRIT PETITION NO. 6005 OF 2022**

Shri Sanjay Kshirsagar
Age : 56 years, Occu. : Profession,
Office at Vishnu Kamal Complex,
Narayan Peth, Pune 411 030

.. Petitioner

Versus

- 1] Shri Milind Govind Kshirsagar
Age : Adult, Occu. : Service
R/at – “Sanman” Apartment, Ground Floor,
Gaikwad Colony, Savedi Raod,
Ahmednagar
- 2] Shri. Abhay Mohanrao Brahme
Age : 47 years, Occu. Service,
R/at – Flat No. 2, Gharanda Apartment,
S. No. 78/4-5, Plot No. 63, Davi Bhusari
Colony, Near Shrungeri Math, Paud Road,
Pune – 411 038
- 3] Shri. Balkrishna Damodhar Amrutkar
Age – 67 years, Occupation – Business,
R/at 22, Vivek Bunglow, Ashok Nagar,
Dhule
- 4] Mr. Dinesh Patwardhan
C-501, Pate Sanskriti,
Tulshibagwale Colony,
Sahakarnagar No. 2, Pune
- 5] Mr. Devraj Kashikar
Prabhuniwas Society, S. No. 2/12,
Dhankawadi, Pune 411 043
- 6] Mr. Tushar Karnik
Society, Karve Nagar,
Erandawane, Pune 411 004
- 7] Mr. Pradip Joshi
Pawan, C 205, DSK Vishwa,
Sinhagad Road, Dhayari,
Pune 411 041
- 8] Joint Charity Commissioner,
Pune Region, Pune

.. Respondents

[Resp. Nos. 1 to 3 orig.
Opponent nos. 1 to 3 and
Resp. Nos. 4 to 7 – orig.
Appellant Nos. 2 to 5]

...
Mr. Sujeet D. Joshi, Advocate for petitioner
Mr. R.N. Dhorde, Sr. Advocate i/b. Lex Aquila for respondent no.1
Mr. V.D. Salunke, Advocate for respondents no. 2 and 3
Mr. S.P. Brahme, Advocate for respondents no. 5 to 7
Mr. P.G. Borade, AGP for respondent no. 8
...

WITH

CIVIL APPLICATION NO. 9039 OF 2022 IN WP/6280/2022;
CIVIL APPLICATION NO. 9049 OF 2022 IN WP/5594/2022;
CIVIL APPLICATION NO. 9047 OF 2022 IN WP/6005/2022;
...

Mr. Aniruddha A. Nimbalkar, Advocate for the applicants in all CAs.
...

CORAM : MANGESH S. PATIL, J.

RESERVED ON : 30 JUNE 2022
PRONOUNCED ON : 07 JULY 2022

JUDGMENT :

Heard. Rule in all the writ petitions. Rule is made returnable forthwith. The learned senior advocate Mr. R.N. Dhorde, learned advocates Mr. V.D. Salunke, Mr. S.D. Joshi, Mr S.P. Brahme and learned AGP waives service for respective respondents.

2. At the joint request of the parties, all these petitions are taken up for final hearing at the stage of admission.

3. The dispute is pertaining to the management of religious public trust, by name, "Shri Datta Devasthan Trust" established with the object of imparting *Vedic* education, publishing books and administering temples. It also runs a Goshala. It was set up by one Shri Ramkrishna Kshirsagar Maharaj.

4. Because of the disputes, several change reports have been filed under section 22 of the Maharashtra Public Trusts Act (hereinafter "**The Trusts Act**").

5. *Inter alia*, change report no. 956 of 2006, 634 of 2007, 1022 of 2008 and 1281 of 2011 were filed before the learned Assistant Charity Commissioner, Ahmednagar. Change report no. 722 of 2005 was also filed. Apart from several change reports, even there were proceedings under section 41A, 41E of the Trusts Act.

6. It appears that since the parties were approaching this Court, the matters pending at various stages, before the learned Assistant Charity Commissioner and the learned Joint Charity Commissioner were expedited by the orders of this Court. Perhaps in view of such directions of this Court, the learned Assistant Charity Commissioner decided the afore-mentioned change reports no. 956 of 2006, 634 of 2007, 1022 of 2008 and 1281 of 2011 by four separate orders dated 01-12-2020 which were same in *verbatim*. The orders read as under :-

“ This is a change report filed by Prakash Maheshwar Pradhan in respect of “Shri Datta Deosthan Trust, Ahmednagar” bearing P.T.R. No.A-711 (Ahmednagar).

2. The reporting trustee has filed this change report for adding the name of Shri Sanjay Kshirsagar in board of trustees. In support of his contention he has filed notice of meeting dated 27.08.2006, minutes of meeting dated 03.09.2006 and filed an affidavit in lieu of evidence.

3. Objection has been raised by the Murlidhar Eknath Rushipathak and one recorded trustee Shri. Milind Govind Kshirsagar.

4. It is pertinent to note here that all these change reports are time bounded matter. Previous change report No.722/2005 is decided by this authority on 18.06.2020, which was rejected by this authority.

5. It is also pertinent to note that change report regarding appointment of new members in board of trustees bearing change report No.722/2005 is also rejected by this authority on 18.06.2020. As consider order of Hon'ble High Court regarding time bound number, this number also included in that order. Moreover, if these are unauthorized group of persons or outsiders have effected the change and appointed new trustees, such persons so appointed cannot be said to be trustees at all and such an appointment or a change cannot be said to be an appointment or a change at all. The fate of all these further change reports are depend on change report No.722/2005. Therefore, there is no fruit to give time and take evidence in this change report No.956 of 2006. Hence, in view of order passed in change report No.722/2005 I passed following order.

Order.

- i) Change report is rejected.
- ii) No order as to costs. ”

7. The reporting trustees have challenged the orders in their respective change reports by four separate Appeals no. 3 of 2021, 4 of 2021, 1 of 2021 and 2 of 2021 under section 70 of the Trusts Act respectively. It was alleged by the appellants that the learned Assistant Charity Commissioner without giving any opportunity of being heard mechanically decided the change reports even without indulging in examining their legality or otherwise on merits.

8. In Appeal no. 1 of 2021, the appellants submitted application (Exhibit - 3) seeking stay to the operation of the order passed by the learned Assistant Charity Commissioner in change report no. 1022 of 2008. By moving application (Exhibit - 48), they even prayed for an *ad interim* relief. By common order on both these

applications which is under challenge in these writ petitions, the learned Joint Charity Commissioner rejected the applications and further appointed the Inspector of the Public Trust Registration Office at Ahmednagar as the administrator to protect the interests of the trust and to manage its affairs. He also issued few other consequential directions to the Administrator. It is this order which is under challenge in these three writ petitions by three different group of persons of which writ petition no. 5594 of 2022 is filed by the trust through four persons claiming to be the trustees, which is the lead petition. Even a person stated to be interested has filed an application for intervention.

9. The learned advocates for the petitioners have been unanimous in submitting that a bare look at the order passed by the learned Assistant Charity Commissioner shows that apart from the fact that the orders do not disclose about any opportunity of being heard having been extended to the parties, the learned Assistant Charity Commissioner had not even taken pains to decide the change reports on their merits. Only by observing that earlier change report no. 722 of 2005 was rejected, she has rejected the change reports in *limine*. The orders are patently illegal. They would submit that the learned Joint Charity Commissioner has clearly overlooked this important circumstance going to the root of the legality of the orders passed by the learned Assistant Charity Commissioner. Rather she has completely misdirected itself by subscribing to the ill founded reasoning given by the learned Assistant Charity Commissioner that

since the change report no. 722 of 2005 which was made time bound by the High Court was decided by a detailed order, even these change reports were liable to be rejected.

10. The learned advocates would further point out that irrespective of the fact that there has been long standing disputes between various persons having interest in the trust who are parties in these petitions, the affairs of the trust have been duly managed by the trustees from the writ petition no. 5594 of 2022. They would submit that immediately after rejection of the change reports by the aforementioned orders of the learned Assistant Charity Commissioner, the respondent - Milind Kshirsagar who happens to be the nephew of the founder of the trust has created obstacles in the management of the trust. He has been raising objections with the bankers of the trust who were till then allowing these petitioners to operate the accounts of the trust but refused them to operate the accounts after such objection. They would submit that in view of such peculiar state-of-affairs, it has become difficult for them to manage the affairs of the trust and the petitioners in writ petition no. 5594 of 2022 even have specifically mentioned that they have been required to open the coffers of the trust to manage the affairs.

11. They would submit that though the change reports have been rejected by the learned Assistant Charity Commissioner, the matter was pending before the learned Joint Charity Commissioner in

the form of statutory appeal and the learned Joint Charity Commissioner should have accepted the request of the petitioners to stay operation of the orders of the learned Assistant Charity Commissioner under challenge. That would have allowed the *status quo* to continue. The learned Joint Charity Commissioner has ignored all such state-of-affairs.

12. The learned advocates for the petitioners would then submit that the learned Joint Charity Commissioner was not merely contented in rejecting the applications for stay / interim relief but has demonstrated her unprecedented enthusiasm in further appointing an administrator which was not the purport of the limited enquiry while deciding the applications for interim relief (Exhibit - 3 and Exhibit - 48). They would submit that though the learned Joint Charity Commissioner does have a power in a fit case to function administratively and to consider the welfare of the public trust, the manner in which the directions for appointment of an administrator have been given were completely beyond the jurisdiction since it was merely an appeal under section 70 of the Trusts Act arising from the rejections of the change report that was under challenge. If the circumstances, according to the learned Joint Charity Commissioner were indicative of the need for appointment of an administrator, resort could have been had to the requisite provisions contained in the Trusts Act. Even the petitioners were taken by surprise since there was no notice or indication to them that the learned Joint Charity

Commissioner was intending to pass an order appointing an administrator. Therefore, even the provisions of natural justice were not followed while directing appointment of an administrator. The order is patently illegal. It be quashed and set aside and the applications for interim relief (Exhibit - 3 and Exhibit - 48) may be allowed. They would submit that the hearing of the appeals before the learned Joint Charity Commissioner may also be expedited.

13. The learned Senior Advocate Mr. Dhorde submitted that there is no error or illegality committed by the learned Assistant Charity Commissioner in rejecting the change reports since their fate was dependent on the earlier change report no. 722 of 2005 which was already rejected by a detailed order and the order was under challenge in another appeal before the learned Joint Charity Commissioner. He would, therefore, submit that in the peculiar facts and circumstances, since all these change reports were for appointment of new trustees, the fate of every such subsequent application was dependent on the outcome of the earlier change report.

14. Mr. Dhorde would further submit that in spite of the fact that more than 30 change reports have been pending at various stages as mentioned by the learned Joint Charity Commissioner in the order under challenge, the petitioners somehow have been clinging on and have been illegally managing the affairs of the trust. The settler of the trust had duly appointed his nephew - Milind Kshirsagar as a

permanent trustee but the petitioners are not allowing him to take part in the administration of the trust. The petitioners have been deliberately prolonging the matters and continuing to manage the affairs of the trust arbitrarily.

15. Mr. Dhorde would submit that the petitioners themselves had mentioned before the learned Joint Charity Commissioner in their application for interim relief that the affairs of the trust were in doldrums. When the petitioners themselves were coming with such a stand, no fault can be found in the order of the learned Joint Charity Commissioner in expressing need for appointment of the administrator for the better management of the trust. The learned Joint Charity Commissioner has ample powers under section 41A, 41E etc. of the Trusts Act to pass appropriate orders for managing the affairs of the trust. Therefore, apart from the fact that there was no illegality in refusing to stay the operation of the orders passed by the learned Joint Charity Commissioner, the order directing appointment of an administrator is clearly justified and there is no error in exercising the jurisdiction by the learned Joint Charity Commissioner.

16. The learned advocates for the rest of the respondents adopted the arguments of Mr. Dhorde.

17. The learned advocate for the applicant who has preferred the application for intervention would submit that the petitioners are

guilty of mismanagement and it was appropriate for the learned Joint Charity Commissioner to appoint an administrator.

18. I have carefully gone through the papers and have considered the rival submissions.

19. There is no dispute about the fact that more than 30 change reports are still to reach finality. The parties are embroiled in a bitter fight for years together. It is not an unusual for a public trust. For, the persons claiming to be interested in public charities are often have personal agenda and indulge in self aggrandizement. If really a person is interested in working for the betterment of the society, why should he insist that he should be allowed to do the charities through a trust which is already set up and established. It is common experience that the persons having interest in the trust are hail-bent in having the administration of the trust in their hands. Even the egos are involved which again should not have a place if a person really intends to take part in the upliftment of the society.

20. This is yet another example which substantiates the above observations. For whatever reason, the parties to these petitions have been at loggerheads and intending to keep the reigns of the trust in their hands. They are not allowing the change reports to reach finality. More than 30 change reports are still to reach finality. Even this Court had to make the enquiries time bound.

21. The fact remains that though the four change reports have been rejected by the learned Assistant Charity Commissioner and even if the petitioners in writ petition no. 5594 of 2022 in their applications (Exhibit - 3 and Exhibit - 48) had averred that the affairs of the trust were in doldrums, it is a matter of record that they have been managing the affairs of the trust and even operating the bank accounts. This is clear from the correspondence made by respondent - Milind Kshirsagar and Amrutkar to the bankers of the trust soon after the change reports were rejected by the learned Assistant Charity Commissioner. Therefore, one cannot but draw an inference that the petitioners in writ petition no. 5594 of 2022 are at the helm of the affairs of the trust in question.

22. If such is the state-of-affairs, when the change reports have been rejected by the learned Assistant Charity Commissioner on the sole ground that the change report no. 722 of 2005 was also rejected, and that the petitioners had challenged the legality of the orders passed by the learned Assistant Charity Commissioner in statutory appeal under section 70 of the Trusts Act, it clearly would have been in the fitness of the things to allow the status quo to continue till decision of the appeals, by staying operation of the orders under challenge pending appeal. The purpose of preferring the appeal which is a statutory right is certain to be lost if in the meantime, on the basis of the rejection of the change reports the status quo is sought to be altered. Pertinently, change reports which have been rejected by

the learned Assistant Charity Commissioner were of the years 2007, 2008 and 2011 and there was no order restraining the petitioners from managing the affairs of the trust *interregnum*.

23. The learned Joint Charity Commissioner has not recorded sound and convincing reasons while refusing to stay operation of the orders under challenge before her.

24. True it is that the petitioners in writ petition no. 5594 of 2022 had expressed in the contents of the applications (Exhibit - 3 and Exhibit - 48) that the affairs of the trust were in doldrums. However, as has been rightly submitted by learned advocate Mr. Brahme, the learned Joint Charity Commissioner has not appreciated and understood the word in the context in which it was used. If one considers the context in which such a word was used in these applications, it is quite apparent that though the petitioners had used the word, it has not been used to allege that there are rampant mismanagement in the administration of the trust. Rather, they were intending to demonstrate that if the orders under challenge in the appeal were not stayed and if in view of several applications preferred by different persons under section 73A of the Trusts Act, to participate in the appeals, decision on which would have taken time and would have prolonged the hearing of the appeals the affairs of the trust would be in doldrums. It was specifically mentioned that the application (Exhibit - 48) in which this word was used was to be read along with

the contents of the appeal memo and the stay application wherein it was pointed out that after rejection of the change reports they were not being allowed to operate the bank accounts of the trust on the objections raised by some of the respondents.

25. The learned Joint Charity Commissioner has clearly picked up this word “doldrums” to reach a conclusion that the affairs of the trust are not being managed properly by clearly overlooking the fact that though there have been long standing litigation and bitter relations, the petitioners in writ petition no. 5594 of 2022 were the persons who were managing the affairs of the trust and have been operating the bank accounts.

26. It was not the case that there was some order in some proceeding pending before the authorities under the Trusts Act either under section 41A, 41E or 41D etc. specifically preventing petitioners from writ petition no. 5594 of 2022 in taking part in the administration of the trust. Needless to state that there must be someone who must have been looking after the management of the trust when it is nobody's case that in spite of being a religious trust, it has not been functioning for years together.

27. Overlooking all the afore-mentioned facts and circumstances, the learned Joint Charity Commissioner has exercised the jurisdiction which though vested in her was not called upon to be exercised while directing appointment of the administrator.

28. There are ample provisions under the Trusts Act to issue appropriate directions for the better management of the trust. But then, this can be done in an appropriate enquiry after extending an opportunity of being heard to all the persons stated to be having interest in the trust. In her enthusiasm, simultaneously with the rejection of the application for interim relief, without there being any request or even material, cogent and convincing, in exercise of administrative power, she has appointed the administrator.

29. There is no record to show that the learned Joint Charity Commissioner had even hinted at and put the parties to notice that she was thinking of appointing an administrator so that they could have taken opportunity to even address her in that respect. When she was only called upon to decide the applications for stay (Exhibit - 3 and Exhibit - 48), the parties could not have contemplated any such direction for appointment of an administrator. Certainly, such a direction must have come as a bolt from the blue. This is not the manner in which the authority conferred with a power to decide a judicial enquiry can function.

30. We need not delve deep and it would be sufficient to observe that apart from the fact that the learned Joint Charity Commissioner has erred in refusing to allow the applications (Exhibit - 3 and Exhibit - 48) even direction to appoint administrator is clearly perverse, arbitrary and capricious.

31. The writ petitions are allowed. The order impugned in all these writ petitions is quashed and set aside. The application (Exhibit - 3) filed in Appeal no. 1 of 2021 is allowed.

32. Hearing of the appeals is expedited.

33. Pending civil applications are disposed of.

34. Rule is made absolute in above terms.

[MANGESH S. PATIL]
JUDGE

arp/